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Gram Nyayalaya

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Abstract
The burden of cases is increasing day by day on the Courts of all sorts all over India. Whether it be the Apex Court or the lower Judiciary, the heat is on the lawmakers to break the ice. In order to provide succour to the litigants, the successive governments have tried to address this menacing problem by adopting various measures. Alternate Dispute Redressal mechanism is one of the most potent weapon in this regard. After the failure of the Nyaya Panchayat system due to various reasons, the concepts of Lok Adalats, Consumer Forums, various kinds of dispute redressal forums like Telephone Adalats, Vidyut Upbhokta Adalats etc., Conciliation Forums established in various Courts, and Arbitration Forums, came out of embryonic stage and are in practice now. But the Government's ultimate aim to provide justice at the doorstep of the litigant was a dream yet to be fulfilled. In this direction, taking into consideration Law Commission's recommendations and previous experiences, the Govt. of India introduced the concept of Gram Nyayalayas at the grassroot level. This paper intends to study the various aspects of the Gram Nyayalays Act and also pinpoints its weaknesses and strengths.

Keywords: nyaya panchayats, alternate disputes redessal, gram nyayalaya act

1. Introduction
Some form of village self-government seems to have some form of village self-government seems to have existed in India from the earliest times in which people grouped themselves into settled communities. The rulers of the ancient Hindu and Buddhist Kingdoms were hardly in a position to govern actively those of their subjects who lived in outlying villages even if they had the wish to do so; distances were too great and communications too bad. The king collected taxes and listened to complaints brought before him. But for most of the activities in which a modern state impinges on the lives of its citizens- the arrest and trial of criminals, settlement of quarrels, and education of the young, prevention of disease and so on- the rural people had to depend on themselves. During the troublous times that set in with the Mohammedan invasions, when Central governments were often paralysed, the villagers had to rely to an even greater extent than before on the primitive apparatus of self- government which they had evolved in the course of centuries [1].

"Panchayat' means 'group of five' and though number five was not rigidly adhered to, it is obviously a suitable strength for a committee which should be representative without being unwieldy. "Panchayats, which have existed in India for thousands of years are a characteristic and distinctive institution of Indian civilization [2]."

It cannot be said that the role of panchayats was ideal as far as suppression of crime and dispensing of justice was concerned. "It may have been dilatory, unenterprising and far from impartial, but it served the villagers' needs and gave them the sort of administration to which they were accustomed. It controlled the village servants, settled disputes according not to statute law but to custom and equity [3]."

The dispensation of Justice, civil, criminal and revenue in rural India either through village panchayats or through different State agencies and their measurement of their success and failure is the scope and objective of this study. Gram Nyayalaya is the latest attempt in this direction. To understand the whole processes of dispensation of legal remedies in rural areas, a journey thorugh different phases of our history is a sine qua non.

2. Historical Background
2.1 Administration of Justice in Ancient India
Dr. Radha Kumud Mookerji, in his monumental treatise, "Local Government in Ancient India [4]", has narrated a detailed and vivid picture of the system of justice in ancient India the text of his narration is being reproduced from his book with the objective of clarity and better understanding of the subject:

"One of the most important functions of the local bodies was, of course, the administration of justice. According to Brhaspati 'Judicial assemblies are of four sorts: stationary, not stationary, furnished with the king's signet ring, and directed by the king. A stationary court meets in a town or village; one not stationary is called movable; one furnished with the king's signet-ring is superintended by the chief judge; one directed by the king is held in the king's presence'[I.2-3] The relations between these different kinds of courts of jusitice are thus indicated by Narada: 'Family meetings (Kula), corporations (Sreni), village assemblies (gana), one appointed by the king, and the king himself are invested with the power to decide law-suits; and of these each succeeding is superior to the one preceding it in order' [I.7] The significance of this passage from Narada is thus brought out by the

commentator Asahaya: 'A suit decided in a village goes on appeal to the city (court). What has been decided in the city (court) goes (on appeal) before the king (i.e. the king's court); but there is no appeal from the decision of the king, whether right or wrong. We are not, however, concerned with the higher or king's courts (forming the last two varieties in Brhaspati's classification of courts) but only with the lower and local courts (the first two classes of courts mentioned by Brhaspati). These lower and local courts were, according to the Smrtis, constituted by the kula, the 'sreni', the gana, or the puga. The gradation of the courts indicated by Narada is also indicated by other law-givers. Brhaspati states: 'Relatives, companies (of artisans), assemblies (of co-habitants) and other persons duly authorized by the king should decide law-suits among men, excepting causes concerning violent crimes (sahasa). Meetings of kindred, companies (of artisans), assemblies (of co- habitants) and chief judges are declared to be resorts for the passing of a sentence to whom he whose cause has been previously tried may appeal in succession.' This is further explained thus: 'When a cause has not been (duly) investigated by meetings of kindred it should be decided after due deliberation by companies (of artisans); when it has not been duly examined by companies (of artisans it should be decided) by assemblies (of cohabitants); and when it has not been (sufficiently) made out by such assemblies (it should be tried) by appointed (judges)' [1. 28-30]. Yajnavalkya [II.30] also mentions a similar gradation of local courts such as kula, sreni, and puga arranged in the ascending order of importance, the kula being the lowest court composed of kinsmen for arbitration in small matters, from which an appeal lay to the next higher courts. The sreni has been defined by the Mitaksara as the court constituted by traders or artisans including men of different castes but pursuing similar means of livelihood, and the puga as the court constituted by men of different castes and occupations but inhabiting the same village or town. It was ruled that if an appeal was lost the appellant must pay double what he was fined by the lower court. The meaning given by the Mitaksara for the different courts makes it clear that their gradation was determined by their numerical strength and the degree in which they represented the various interests, classes or castes in the community concerned. Thus the puga was the highest court because it was numerically the largest assembly, on which were represented not merely the different castes, as in the 'sreni', but also the interests of different crafts, trades, or occupations in the village or township.

The principle underlying these lower and local courts has been admirably put by the Sukraniti. In cases of dispute the best men of the locality concerned can alone be the proper judges. The application of the principle thus laid down is shown in the following passage: 'Foresters are to be tried with the help of foresters, merchants by merchants, soldiers by soldiers, and in the village by persons who live with both parties' [IV. 5.24]. This is indeed an echo of the earlier Smrti works. Brhaspati says: 'For persons roaming the forest, a court should be held in the forest; for warriors, in the camp; and for merchants in the caravan'. Again: 'Cultivators, artisans (such as carpenters and others), artists, money-lenders, companies (of tradesmen), dancers, persons wearing the token of a religious order (such as Pasupatas) and robbers should adjust their disputes according to the rules of their own profession.' Further: '(the king) should cause the disputes of ascetics and of persons versed in sorcery and witchcraft to be settled by persons familiar with the three Vedas only, and not decide them himself' [I.25-7]. The same principle of neighbourhood and local knowledge is also recognized by Manu when he holds 'the indigenous (inhabitants of the country, be they) Ksatriyas, Vaisyas, or Sudras' as being alone competent to give evidence [VIII.62]. The principle was held to be essential in settling disputes regarding boundaries, on which the following rules are laid down: 'If there be no witnesses let your men who dwell on all the four sides of the two villages make a decision concerning the boundary' [VIII.258] 'The decision concerning the boundary-marks of fields, wells, tanks, of gardens and houses depends upon (the evidence of) the neighbours'. On failure of the above kinds of witnesses 'the evidence even of the following inhabitants of the forest' was admissible on account of their local knowledge, viz., 'hunters, fowlers, herdsmen, fishermen, root-diggers, snake-catchers, gleaners, and other foresters' [ibid., 259,260, 262] Yajnavalkya [II. 153-5] has also the same regulation: 'In disputes relating to boundaries of land under cultivation persons residing in surrounding villages, aged men and other (competent persons), cow herds, persons cultivating boundary lands and all persons living on forest produce should determine those boundary (disputes).' Again: 'Or persons from neighbouring vilages equal in number (i.e. two or four villagers)- four, eight, or ten-should settle the boundary lines.' Finally, the Kautiliya will have all disputes regarding the boundary between any two villages settled by neighbours or elders of five or ten villages, and disputes arising in the same village by the elders of the neighbourhood or of the village (grama-vrddhah). It is also stated that all kinds of disputes shall depend for their settlement on the evidence to be furnished by neighbours. We may also cite the opinion of Vasistha: 'In a dispute about a house or a field reliance (may be placed on the depositions of) neighbours [XVI.13] As explained by Kautilya the decision of these courts was that of the majority of the persons constituting the court.

The local courts took cognizance of both civil and criminal cases. In the Kautiliya there occurs a passage in which power seems to be given to the headman of the village to deport out of it criminals like a thief or an adulterer. In some of the South Indian inscriptions there are given interesting details regarding the administration of criminal law. 'A certain individual shot [an arrow at] a man belonging to his own village by mistake. Thereupon the governor and the people of the district to which the village belonged assembled together and decided that the culprit should not die for the offence committed by him through carelessness.' He was not, however, allowed to escape scot-free, but was made to atone for his action by the penalty of providing for a perpetual sacred lamp at the temple, for which he had to assign sixteen cows to the village assembly. There are two other instances of similar trials connected with shooting accidents or unintentional homicide in which

the assembly administered justice without troubling the governor, thus showing how the people 'played a more important part at such trials than even the governor himself'. An inscription of about
A.D. 1054 records the suicide of a woman whom a village officer had put through an ordeal for her resistance to certain taxes for which she did not hold herself liable. A meeting of the people from 'the four quarters, eighteen districts and the various countries' was held. The officer was declared guilty and fined. [See Madras Epigraphy Reports, 1899-1900,] 26; 1906-7, 42]"

From the perusal of the above insightful statement of administration of justice in ancient India, it is amply clear that 'although Indian civilization contained refined and respected bodies of legal learning- the Dharmasastra (Hindu law) and later Muslim law as well- and although there were royal courts in administrative centres, these did not produce a unified national legal system of the kind that developed in the west. The textural law influenced but did not displace the local law. The government's law did not penetrate deeply into the countryside. Throughout most of Indian history there was no direct or systematic State control of the administration of law in the villages where most Indian lived [5]."

2.2 Pre-British India

In pre-British India there were innumerable, overlapping local jurisdictions, and many groups enjoyed some degree of autonomy in administering law to themselves. Disputes in villages and even in cities would not be settled by royal courts, but by tribunals of the locality, of the caste within which the dispute arose, or of guilds and association of traders or artisans. Or, disputes might be taken for settlement to the *Panchayat* of the locally dominant caste or to landowners, government officials or religions dignitaries [6].

Some panchayats purported to administer a fixed body of law or custom; some might extemporize. In some places and some kinds of disputes, the process was formal and court-like. Some *Panchayats* were standing bodies with regular procedures, but many of these tribunals were not formal bodies but more in the nature of extended discussions among interested persons in which informal pressure could be generated to support a solution arrived at by negotiation or arbitration. These tribunals would decide disputes in accordance with the customs or usage of the locality, caste, trade or family. Custom was not necessarily ancient or unchangeable, it could be minted for the occasion. The power of groups to change customs and to create new obligatory usages was generally recognized [7].

Rulers traditionally enjoyed and occasionally exercised a general power of supervision over all these lesser tribunals. In theory, only the royal courts could exercise executive severe punishments. These lesser tribunals could pronounce decrees and invoke royal power to enforce them. But while some adjudications might be enforced by governmental power, most depended on boycott and excommunication as the ultimate sanctions. Community enforcement of these sanctions therefore, had to reflect a high degree of consensus [8].

3. British Era

The advent of the Britishers as a ruling class brought into its wake a slow revolution in the countryside. "Statute law look the place of social and religions custom as the *ultima ratio.* Novel conceptions like freedom of contract gave individuals a new status [9]."

The British Courts and the ever- increasing band of lawyers whom them fostered made their influence felt in the remotest village. The tribunals offered by Government for the redress of injuries were, in the early days of British rule, not easy of access and.....not satisfactory when reached, but they could enforce their decisions and only their decrees could give claimants a legal status [10]. The village courts were unable to compete with these formidable rivals. The quasi-democratic rural polity crumbled away. In Bihar and Bengal the landlords, entrenched behind the Permanent Settlement, usurped the Panchayat's authority over the village servants and forced the peasants to bring their disputes to their own irregular courts for decision [11].

A long road had to be traversed and many experiments had to be tried before Indian Governments were driven to the conclusion that the old panchayats must be resuscitated in some form or another [12]. Acts were passed from time to time defining the rights of cultivators. Strenuous attempts were made to improve the courts and the police and to put down crime. By the establishment of new sub divisional and tahsil centres and the provision of outlying benches of honorary magistrates justice was made more accessible. Executive officers toured the countryside settling disputes locally, looking into people's wants, and doing what was in their power to redress grievances [13].

During the nineteenth century however, the conception that villages affairs might in certain directions be managed by village agency was not altogether absent. Judicial powers had been given to panchayats in Madras as early as 1819. They were not popular, but village headmen sitting alone dealt with a good many cases (96,000 in 1911). In Bombay an Act of 1879 provided for giving headmen powers to try petty suits. The United Provinces followed with similar legislation in 1892. The Indian Criminal Procedure Code provided for vesting headmen with certain powers; and by an Act of 1870 the control of the village police in Bengal was entrusted to Panchayats [14].

The Decentralization Commission was appointed in 1909 to examine and report on measures of decentralization. The Government of India consulted Provincial Governments on the Commission's recommendations and after considering their views produced a cautiously worded Resolution in May 1915, suggesting the formation of 'experimental' panchayats which should have both administrative and judicial functions. As a consequence, separate legislations were enacted in different provinces. Some divergence between the various provinces could be noted as far as powers and duties of Panchayats were concerned. Where a Panchayat was looked upon chiefly as a body which can settle local disputes, prominence is given to its judicial functions. In the United Provinces, to give example, the Panchayats

had judicial power as a matter of course and the trial of petty cases was the most important part of their duties [15].

Judicial Powers

Panchayats were nowhere allowed to handle serious criminal cases or complicated civil suits; their powers extended only to the trial of petty cases and the disposal of suits in which no valuable rights or property were at stake. The limits of their jurisidiction were laid down in the relevant Acts.

There was usually a lower limit which was the normal, and a higher one applying only to specially empowered Panchayats. The outside limit of fine which a Panchayat could impose in any province was Rs. 50. Specially empowered Panchayats in certain provinces could deal with civil suits upto a value of Rs. 200; the usual limit was lower. Sentences of imprisonment, if allowed at all, might only be imposed for default in payment of a fine. Some of the Acts attempted to give the Panchayats exclusive jurisidiction in their own sphere, and to restrict the right of appeal as far as may be, but there are safeguards against the abuse of authority, the regular courts being permitted to withdraw cases from panchayats in certain circumstances.

Procedure was to be as informal as possible, no elaborate records needed to be kept, and legal practitioners were not allowed to appear [16].

Outputs at Work

This was important in the Punjab and the United Provinces. In the latter the panchayats disposed of 91, 476 Cases, Criminal and Civil, in 1932-33; it is found there that the out-turn and quality of a Panchayat's work depends greatly on the personality of its headman or *Sarpanch* and that the existence of faction in a in a village was fatal to the administration of justice [17].

In Bengal judicial work was *relatively* unimportant, since only about one-fifth of the Panchayats had Judicial powers, but 68, 600 criminal cases and 138,392 civil suits were disposed of in 1932-33; the Panchayat Courts were said to be gaining in popularity [18].

In Bihar there were only 118 judicial Panchayats, disposing of 2,400 criminal cases and 6,062 civil suits in 1933-34. On account of their generally fair, quick and cheap disposal of cases the Panchayat Courts were reported to be gaining public confidence and popularity in many places [19].

In the Central Provinces the number of cases disposed of in 1933-34 was 6,162 and of suits 10,203. Nothing said about the quality of the work, but as the number of Panchayats with judicial powers was growing and as enhanced powers were being given to them it was evident that they commanded confidence [20].

Gertrude Emerson, an American lady, in her book *Voiceless India* [21] has described a trial of a case by a panchayat in the United Provinces: "The Panches were already comfortably established on Jokhi Lal's big square bench, spread with its black and white striped rug of goats' hair. Two of Jokhi Lal's youngest children sat beside him, dressed in their gayest gold-embroidered jackets of velvet and round satin caps, and the pretty nine-year old granddaughter of Mahabir Prasad leaned affectionately against his shoulder. At the opposite end of the room and around the door, always pushing forward and always being assiduously shoved back by the panches' personal servants and the official messenger attached to the court, were the witnesses, plaintiffs, and defendants, men, women, and babies, the few whose presence was required and the many who came out of curiosity.

'Jokhi Lal uncorked the ink bottle beside him and opened the fat, flexible book in which he kept all the proceedings in his neat Hindi. Another book, bound in flowered calico, contained brief comments in English from the various officials, Indian and English, who from time to time inspected the panchayat records. A name was called, and a man with a white cloth about his shoulders stood out in front of the panches and began talking. He talked a long time and wept a little. Then another younger man stepped out and talked an even longer time with fiery eloquence. He was followed by a woman, who wept copiously. I gathered that a fight had taken place. A small boy stole a stick of wood from a cart on the road, and the cartman caught him and began beating him. An older brother came to the boy's rescue, and a pitched battle ensured between the cohorts of both sides. The cohorts, now summoned as witnesses, told their story, prodded with questions from time to time by the panches. Jokhi Lal methodically wrote everything down, then read aloud what he had written and had each witness step up and approve his statement by affixing his thumb-print. It grew dark outside and darker inside. A lantern was brought and set on the table. Still the village battle went on. At last Asgar Ali arrived to light me home. A half dozen witnesses had not yet been heard. Afterwards. I was informed that, in the opinion of the Panchayat, the cartman had been found guilty of assault and had been fined ten rupees.'

'Fights, petty thefts, damage to property through straying cattle, unrepaid loans, cases of "insultation" as calling bad names was once described to me these were the village problems patiently reviewed and judged by the panchayat. Shiva Dutt stole fifteen rupees from Govind Ram and was caught with the stolen money in his possession. He was ordered to return it and pay a fine of five rupees. Habibullah's cattle were found grazing in a field belonging to Niamat. When Niamat rounded them up and started for the pound at the police station, Habibullah appreard on the scene with a band of helpers and forcibly rescued them. He was fined five rupees. Sums ranging from fifteen to thirty-five rupees had been borrowed in three cases, and the accused had neither repaid nor 'freshened' the documents. The court ordered repayment in two cases. In the third, though the accused was guilty, nothing could be done. The law stipulates that unless a case for recovery is brought within three years, it becomes void, and this case was too old."

4. Constitution- making and Village Panchayats:

The draft Constitution of India didnot contain any reference to villages and was subjected to the criticism that 'no part of it represents the ancient polity of India."

Dr. Ambedkar, the chief draftman, vigorously defended the omission of villages, and stated: " I hold that those village republics have been a ruination of India.....What is a village but a sink of localism, a den of ignorance, narrow mindedness and communalism? " In response, Mr. H.V. Kamath dismissed Amedkar's attitude as that of an "Urban High-brow' and insisted that sympathy, love and affection 'toward' our village and rural folk' was essential for the 'uplift' of India. Mr. T. Prakasham pleaded for the 'uplift' of India. He pleaded for a modernized system of *panchayats* which will give 'real power to rule and to get money and expend it, in the hands of the villagers'. Professor N.G. Ranga asked, "without this foundation stone village panchayats, how would it be possible for our masses to play their rightful part in our democracy [22]?"

Gandhi himself had urged a different form of polity for India. Gandhi stated his ideal of village *swaraj* (self-rule) in pragmatic as well as poetic terms [23].

The Constitution as it emerged did include certain village- oriented Directive Principles of State Policy. Article 40 obligates the state to 'take steps to reorganise village *panchayats* and endow them with such powers and functions as may be necessary to enable them to function as units of self-government. Article 40 has been among the most vigorously implemented provisions of the Indian Constitution.

5. Post-Independence Experimentation in Legal Access for the Village Population

5.1 Nyaya Panchayats

While Article 40 of the Constitution enjoins the state to organize village *panchayats,* another Directive Principle (Article 50) directs it to take steps to separate the judiciary from the executive. Apart from the states which already had a system of village courts at the time of the adoption of the Constitution (Madras, Mysore, Kerala), only a few states (Madhya Pradesh, Uttar Pradesh) implemented Article 50 upon the adoption of the Constitution by creating separate *Nyaya Panchayats*. In the period following the adoption of the Balwant Rai Mehta Committee Report (1959) and the reorganization of the village institutions both as local government and developmental agencies, many more states established *Nyaya Panchayats* as separate judicial bodies, thus fulfilling the Directive Principle of separation of the judiciary from the executive [24].

The ideology of separation of judicial from the executive power, embodied in Article 50, was clearly one impulse that led to the creation of *Nyaya Panchayats* in States which did not have such separate bodies. But the creation of judicial panchayats was not entirely a function of this ideology. It was also kept in mind that in order to increase the efficiency of village panchayats in performance of developmental and governmental tasks, relief from the judicial workload was necessary [25]. Law Commission's *Fourteenth Report* testified to the volume of this work in the years following independence. In U.P., for example, judicial panchayats heard, for the period 15 August 1949 to 31 March 1956, 1, 914, 098 cases, of which 1,894,440 cases were disposed. Clearly, then, as a measure of planning efficient allocation of work-load, the establishment of *Nyaya Panchayats* must have been felt essential. However, apart from the ideology of separation and consideration of efficient division of labour, the creation of *Nyaya Panchayats* can be seen as illustrating two other concerns. First, their creation testifies to concern for providing easy legal access to the village population. Second, at the same time, it also represents a massive attempt by the State to displace (as effectively as it could) the existing dispute processing institution in village areas-be they *Jati* (Caste) institutions, territorially based secular institutions or special dispute processing institutions established under the auspices of social reformers (such as the Rangpur People's Court). The *Nyaya Panchayats* seek to do this by retaining procedural flexibility and lay adjudicators, thus co-opting the very features of the institutions they seek to displace. On the other hand, the *Nyaya Panchayats*, as integral parts of the administration of justice, are characterized by principles of formal organization and of judicial oversight and control which donot 'mesh in' with the organization of justice by village communities [26].

Although the establishment of Nyaya Panchayat derived symbolic support from an appeal to the virtues of traditional *panchayats,* it should be emphasized that these new tribunals are in many ways very different from their traditional counterparts [27]:

a) Their membership is fixed rather than flexible and is based, indirectly, on popular election rather than social standing;
b) Their constituencies are territorial units rather than functional or ascriptive groups;
c) They decide by majority vote rather than by rule of unanimity;
d) They are required to conform to and to apply statutory law;
e) They are supported by the government in the compulsory execution of their decrees; these decrees may be tested in regular courts.

Constitution and Composition of Nyaya Panchayats

Nayaya Panchayats are established for a group of villages, usually an area covering 7 to 10 villages. Nyaya Panchayat usually cover a population of 14,000 to 15,000 villagers. A member of a Nyaya Panchayat must be able to read and write the State Language, must not suffer from any disqualification described in the statute, and must not hold an office of Sarpanch or be a member in the Samiti, parishad, or State or Union Legislature. The rules regarding appeals in disputed elections are the same as those which apply to gram panchayats. The Nyaya Panchayat has a chairman and secretary elected by its members, One third of its members retire every second year.

Almost all States have adopted election as a method of constituting Nyaya Panchayat. Each *gram panchayat*. (Itself an elected body) elects members for Nyaya Panchayats. Some states combine the method of elections with nomination for example, in The Law Commission, in its *Fourteenth Report,* however, expressed itself

against the principle of government nomination of *nyaya panchayats* [28].

Jurisdiction

Nyaya Panchayats have civil and criminal jurisdiction, but the former is more limited than the latter. Civil jurisdiction is normally confined to pecuniary claims of the value of Rs. 100 which may by agreement among parties be raised to Rs. 200 involving money due on contracts not affecting interests in immovable property, compensation for wrongfully taking or damaging property and recovery of movable property. In some states the civil jurisdiction extends to the recovery of minimum wages or arrears for maintenance (e.g. Kerala).

The criminal jurisidiction is comparatively extensive and covers a substantial range of offences under the Indian Penal Code as well as the special statutes (e.g. Cattle Trespass Act, Gambling Acts, Prevention of Juvenile Delinquency Act). The *Nyaya Panchayats* are authorized to levy fines (ranging from Rs. 25 to 100), but they have no power to sentence offenders to imprisonment, substantively or in default of fine [29].

Emphasis on the amicable settlement of disputes is an important aspect of the *Nyaya Panchayat* ideology. Accordingly, conciliation is emphasized over adjudication in some State legislation [30].

Evaluation of Nyaya Panchayats' Functioning

While the Law Commission (1958) and the Study Team on Nyaya Panchayats (1962) saw a bright future for *Nyaya Panchayats*, two evaluations, namely, the Maharashtra Committee's Report on Panchayati Raj (1971) and the Rajasthan Committee Report (1973) had recommended the abolition of Nyaya Panchayats altogether. 'The pathos of the Nyaya Panchayats is that they have achieved neither the impartiality of the regular courts (at their best) nor the intimacy, informality and ability to conciliate of traditional *Panchayats* (at their best). Instead *Nyaya Panchayats* seem in large measure to have achieved a rather unpalatable combination of the mechanical formalism of the courts with the political malleability of traditional dispute processing [31]." As Catherine Meschievitz summed it up, "the *Nyaya Panchayat* is thus a body of men..... that handles disputes without regard to applicable rules and yet appears to villagers as formal and incomprehensible [32]."

Nevertheless, the Panchayat idea continued to exert a powerful attraction on legal intellectuals. The 1973 report of the Expert Committee on Legal Aid, chaired by (and consisting of) Justice Krishna Iyer, a report that viewed itself as a radical critique of Indian legal managements, speaks glowingly of *nyaya panchayats* as part of a larger scheme of legal aid and access to the courts. *Panchayats* are endorsed as a method of incorporating lay participation into the administration of justice. But it is clear that the justice in mind is "legal justice," the law of the land, and not that of the villagers or their spiritual advisors. *Panchayats* are commended as inexpensive, accessible, expeditious and suitable to preside over conciliatory proceedings. The *panches* envisioned by the report are not village notables but supersaturated Judges and retired advocates [33].

The follow-up report of the Bhagwati Committee, charged with proposing concrete measures to secure access to justice for the poor, endorses a system of "law and justice at the panchayat level with a conciliatory methodology." The argument was that panchayats would remove many of the defects of the British system of administration of justice, since they would be manned by people with knowledge of local customs and habits, attitudes and values, familiar with the ways of living and thought of the parties before them. Yet again the proposed panchayats donot depart from established notions of law. There was to be a presiding Judge having knowledge of law, and the lay members were to receive rudimentary legal training. There would be no lawyers and the tribunal would proceed informally, its decisions subject to review by the district court. What is proposed is an informal, conciliatory, non- adversarial small claims court with some lay participation. This follow-up report- written by distinguished activist Judges dedicated to enlarging access to justice- thus registered the appeal of the locally based "indigenous" forum under the guidance of an educated and beneficial outsider [34].

Gram Nyayalaya Act, 2008

Discussing about the need of entrusting Federal judicial power to hybrid tribunals in reference to United States of America, Professor Lawrance Tribe, in his monumental work "Constitutional Choices" has stated: "..... In a series of cases spanning more than a century and a half, the (Supreme) Court has upheld the constitutionality of several such hybrid tribunals while fervently endorsing the principle of Judicial independence. The Court's quest for a principled distinction between Article III adjudicative power and all other kinds of dispute-resolving authority, like Diogenes' search for an honest man, has taken many roads. The Court has enjoyed little more success than Diogenes [35]." The Gram Nyayalaya Act, 2008 is not the first legislative attempt at establishing a hybrid or informal tribunal like system, (in India), ostensibly located in some version of an indigenous system of dispute resolution. *Nyaya Panchayats* and lok adalats were created with the same objective of dispensing speedy justice in informal settings. Both forums, derived" sentimental and symbolic support from appeal to the virtues of the indigenous system [36]." They note that the informalism of the Lok Adalat with its emphasis on compromise and speedy disposal could disadvantage weaker parties [37].

The Lok adalats are not bound by of Civil Procedure Code 1908 (CPC) and the Indian Evidence Act, 1872. According to the authors, Lok adalat judges appeared to be " overbearing and coercive" to the parties before them- especially poor and unrepresented parties. The authors observe that critics of the look adalats "see in these moves portents of a dismantling of legality in favour of paternalistic, intuitive *kadi* justice for the poor [38]."

The gram nyayalayas capture all the weaknesses of the *Nyaya Panchayats* and lok adalats, and the problems associated with these forums would apply equally to this most recent version of the ostensible indigenous dispute resolution forum [39].

Intent and Jurisdiction

The Act provides for the establishment of gram nyayalayas for the purpose of providing access to justice and to ensure that speedy justice is not denied to any citizen for reasons for social, economic or other disabilities. The gram nyayalaya will be the lowest court of subordinate judiciary in a State and shall be in addition to the regular civil and criminal courts. The Act is broadly based on the recommendations of the Law Commission of India, which had in its 114 the Report (August 1986) [40] suggested the establishment of such courts in order to "provide speedy, inexpensive and substantial justice to the common man. "The Report recommended the concept of the Gram Nyayalaya with two objectives. While addressing the pendency in the subordinate courts was the major objective, the other objective was the introduction of a participatory forum of justice. To make it participatory the Law Commission recommended that the Magistrate be accompanied by two lay persons who shall act as Judges, that the legal training of the Magistrate will be complemented by the knowledge of the lay persons who would bring in the much required socio-economic dimension to adjudication. It was proposed that such a model of adjudication will be best suited for rural litigation. The Law Commission also observed that such a court 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' and that such disputes should not be enmeshed in procedural claptrap. The report suggests that such a litigation is expensive both for the State as well as the litigant. However the participatory aspect has been set aside in the current Act and we find the Gram Nyayalaya manned by the regular First Class Magistrate [41].

The Gram Nyayalaya Act, 2008 received the assent of the President on the 7th January, 2009. The Act came into force on October 2,2009, i.e. the birth anniversary of Mahatma Gandhi. More than 5000 Nyayalay as were expected to be set-up under the Act. Around 194 such Courts have been set up as on March 2015.

The Salient features of the Gram Nyayalayas Act, 2008 are as follows:-

1) Gram Nyayalayas are aimed at providing inexpensive justice to people in rural areas at their doorsteps;
2) the Gram Nyayalaya shall be court of Judicial Magistrate of the first class and its presiding officer (Nyayadhikari) shall be appointed by the State Government in consultation with the High Court;
3) the Gram Nyayalaya shall be established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Panchayats;
4) the Nyayadhikaris who will preside over these Gram Nyayalayas are strictly judicial officers and will be drawing the same salary, deriving the same powers as First Class Magistrates working under High Courts;
5) the Gram Nyayalaya shall be a mobile court and shall exercise the powers of both Criminal and Civil Courts;
6) the seat of the Gram Nyayalaya will be located at the headquarters of the intermediate Panchayat, they will go to villages, work there and dispose of the cases;
7) the Gram Nyayalaya shall try criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the Act;
8) the Central as well as the State Governments have been given power to amend the First Schedule and the Second Schedule of the Act, as per their respective legislative competence;
9) the Gram Nyayalaya shall follow summary procedure in criminal trial;
10) the Gram Nyayalaya shall exercise the powers of a Civil Court with certain modifications and shall follow the special procedure as provided in the Act;
11) the Gram Nyayalaya shall try to settle the disputes as far as possible by bringing about conciliation between the parties and for this purpose, it shall make use of the conciliators to be appointed for this purpose;
12) the judgment and order passed by the Gram Nyayalaya shall be deemed to be a decree and to avoid delay in its execution, the Gram Nyayalaya shall follow summary procedure for its execution;
13) the Gram Nyayalaya shall not be bound by the rules of evidence provided in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice and subject to any rule made by the High Court;
14) appeal in criminal cases shall lie to the Court of Session, which shall be heard and disposed of within a period of six months from the date of filing of such appeal;
15) appeal in civil cases shall lie to the District Court, which shall be heard and disposed of within a period of six months from the date of filing of the appeal;
16) A person accused of an offence may file an application for plea bargaining.

The Central Government has decided to meet the non-recurring expenditure on the establishment of these Gram Nyayalayas subject to a ceiling of Rs. 18.00 lakhs out of which Rs. 10.00 lakhs is for construction of the court, Rs. 5.00 lakhs for vehicle and Rs. 3.00 lakhs for office equipment. Government has also estimated that the Gram Nyayalayas upon establishment would incur a recurring expenditure of Rs. 6.4 lakhs per annum on salaries etc. and proposes to share such recurring expenditure with the State Government for the first three years within this ceiling.

Inadequacies of Gram Nyayalayas

The Act contains provisions which are likely to result in the unjust exclusion of the impoverished from just legal processes thereby restricting access to justice.

a) *Nature of Offences within the Domain of Gram Nyayalayas:* Schedule I of the Act lists those offences which can be adjudicated by the gram nyayalayas. Within its criminal jurisdiction, theft; concealment, disposal and receiving of stolen property; and insult with intent to provoke a breach of the peace are some

of the offences that can be decided by these courts. Vitally, offences which are not punishable with death, imprisonment for life or imprisonment for a term exceeding two years are also included within the scope of its jurisdiction. Part II of this Schedule lists some statutes and offences committed under these Acts within the ambit of the criminal jurisdiction of the gram nyayalayas. Some of these include the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Protection of Civil Rights Act, 1955, the Bonded Labour System (Abolition) Act, 1976, the Equal Remuneration Act, 1976 and the Protection of Women from Domestic Violence Act, 2005. Schedule II includes most property disputes and claims arising from Payment of Wages Act, 1936 and Minimum Wages Act, 1948 within the scope of civil jurisdiction of the Nyayalaya. Evidently, most of these legislations directly affect the impoverished. These are social welfare legislations which require careful and sophisticated adjudication. That this Act does not incorporate proper procedures is even more troubling, given the nature of disputes that will come up for consideration of these courts.

b) *Circumscribed Right of Appeal:* The most problematic part of the Act– Part VII deals with appeals. Section 33 provides for appeals in criminal cases. Subsection (1) provides that notwithstanding anything contained in the Cr.P.C. or any other law, no appeal shall lie from any judgment, sentence or order of a gram nyayalaya except as provided hereunder. The Act already prevents appeals in cases where the "accused person has pleaded guilty" or where the gramnyayalaya has passed a sentence only of fine not exceeding Rs 1,000. This leads up to the legally unjustiable Section 34 (2) that provides that no appeal shall lie from any judgment or order passed by the gramnyayalaya (a) with the consent of the parties; (b) where the amount or value of the subject-matter of a suit, claim or dispute does not exceed Rs 1,000; (c) except on a question of law, where the amount or value of the subject matter of such suit, claim or dispute does not exceed Rs 5,000. It is crucial to note that Sections 33 and 34 provide for appeals in certain cases to the Court of Session and the district court, respectively. Hence, a party can appeal the nyayadhikari's decision to a session's court for criminal matters which must be decided in that forum by that judge within six months. For civil matters the appeal should be directed to district court which must decide it within six months. However, the Act prevents any further appeal after the decision of the Court of Session or the district court. Section 33 (7) provides that the decision of the Court of Session shall be final and no appeal or revision shall lie from the decision of the Court of Session. Similarly, Section 34 (6) provides that the decision of the district court shall be final and no appeal or revision shall lie from such decision. The revised version of the bill that was finally enacted also contains a proviso which allows for availing of judicial remedies available under Articles 32 and 226 of the Constitution. Therefore, for almost all matters that will be decided by the gram nyayalayas, there can be only one additional appeal to subordinate courts. Within the part of the Act, there are also concerns regarding the time limit imposed on filing an appeal against the decision of the gram nyayalaya. As per Section 33 (4), every appeal shall be preferred within a period of 30 days from the date of judgment, sentence or order of a gram nyayalaya in a criminal case. This is similar to Section 34 (3) which lays down the same restrictions for civil cases. The Parliamentary Committee which commented on the 2007 Gram Nyayalaya bill had criticised this provision and stated that "there were no valid reasons as to why the period of limitation provided in the Criminal and Civil Procedure Codes should not be made applicable" to gram nyayalayas (Department Related Parliamentary Standing Committee: 26). In spite of these recommendations, the Act continues to set a bar on the time period which is less than the time prescribed in the procedural laws. This is another example of the Act compromising on proper procedure and is bound to create difficulties for parties involved in litigation at the level of gram nyayalayas.

c) *Summary Procedure and Plea Bargaining:* Gram nyayalayas shall follow summary trial procedure in criminal cases. This runs contra to the Cr. PC that normally governs all criminal trials in the formal court system. Section 20 provides that any person accused of an offence may file an application for plea-bargaining in the gram nyayalaya in which such offence is pending trial and the gram nyayalaya shall dispose of the case in accordance with the provisions of the Cr.P.C. This provision for plea-bargaining must be read in the context of Section 33(2) (a) which provides that no appeal shall lie where an accused person has pleaded guilty and has been convicted on such plea. Further, plea-bargaining has been introduced in the Cr. P.C. which governs the adjudication of criminal disputes in the court system. The Law Commission of India in its 142nd report had recommended a "competent authority", a metropolitan judge or magistrate of the first class or two retired high court judges (depending on the gravity of the offence) would be appointed as plea judges. The accused would file an application for a plea bargain to the "plea" judge. This would ensure that the accused could still get a fair trial from the regular judge should the plea bargain not go through (Tewari and Agarwal 2006). The 154th Law Commission felt that in the Indian context bargaining with a prosecutor would be hazardous and a competent authority would safeguard the principle of a fair trial. Unfortunately, the Gram Nyayalayas Act does not provide for such a competent authority. The application for plea-bargaining is to be led with the court itself. Therefore, if such an application is rejected, this would in turn have an undue bearing when the trial is conducted.

d) '*Interests of Justice'*: While the scheme of the Act which details the special procedure in civil disputes is not entirely undesirable, it is worthwhile to appreciate that Section 24 (7) provides that the proceedings shall, "as far as practicable", be consistent with the interests

of justice. This provision employs non-binding language and is conditional while dealing with an issue of prime importance. Any proceeding in a court of law must be consistent with the interests of justice in all circumstances; however, this provision allows for non-compliance when it is not "practicable".

e) *Civil Court sans Civil Procedure:* In terms of civil suits, the gram nyayalaya has the power of a civil court, and the judgment passed by it shall be executed as if it were a decree of a civil court. However, the forum shall not be bound by the procedure in respect of execution of a decree as provided in the C.P.C. and it shall be guided by the principles of natural justice. Section 30 of the Act dealing with the application of the Indian Evidence Act, 1872, provides that a gram nyayalaya may receive as evidence any report, statement, document, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the said Act. The Act envisages day to day hearing with summary procedure and pronouncement of judgment within 15 weeks from the date of the last hearing. The proceedings shall be in one of the official languages of the state other than English, as far as practicable. The parties may argue their own case but they also reserve the right to engage a lawyer to represent them. The Act also places a duty on the gram nyayalayas to provide for conciliation and settlement of civil disputes for which they shall follow the procedure prescribed by the high court.

f) *Police Assistance*: The Act also seeks to provide for assistance of police to the gram nyayalayas, wherein every police ofcer functioning within the local limits of jurisdiction of such a court shall be bound to assist in the exercise of its lawful authority. Further, it binds the police officer or any other government servant to provide assistance when so directed by these courts. Galanter and Krishnan document the manner in which police assistance has affected the functioning of the Electricity Lok Adalats (Galanter and Krishnan 2004: 812). The police, they note, in fact appear and advocate for the electricity companies. They point out how the police representatives act as the lead advocates not only in criminal matters but also in several other billing disputes (ibid). The authors refer to Julia Eckert's description of the Shiv Sena courts in Maharashtra, where police representatives act as interpreters and arbitrators of the law (ibid). Given the similarity in the setting of lok-adalats and gram nyayalayas, there are bound to be similar difficulties with the explicit inclusion of a provision warranting police assistance in the Act. In a system which compromises on issues of due process and prevents the usual number of appeals, it is dangerous to allow the police to offer "assistance" which may lead to coercion of the litigants.

6. Conclusion

The dispensation of justice in the rural areas have always been a challenging tasks in any period of history. Before the advent of Britishers in India, the administration of justice was broadly in the hands of village panchayats who administered justice with the help of local laws, customs and practicality of the situation. There was no centralised legal system, and the system of monitoring of the village panchayat's functioning was almost lacking. It was the Britishers who for the first time tried to introduce westernised legal system throughout the country. However, it was only after independence that the village panchayats could be armed with a Separate legal wing known as Nyaya Panchayats. This system of administration of justice amounted to a hybrid legal structure which could not find roots in the Indian soil. Within decade after independence, the *Nyaya Panchayat* system began to lose its sheen. Lok Adalats as alternative dispute resolution mechanism started grooming up. But the objective of delivering justice at the doorstep of the village community was still a dream to be fulfilled. Gradually, after long deliberations on the recommendations of Law Commission and other bodies, the Government introduced the concept of Gram Nyayalayas into village scenario and the Gram Nyayalaya Act, 2008 came into existence in the year 2009. But the pace of implementation of this Act has been exceptionally slow. Besides that certain apprehensions and objections have been raised from various quarters regarding the efficiency of the certain provision of the Act which need clarification from the Government machinery. However, the real test of any Act or Statute takes place when it is implemented on ground. Therefore, the first and foremost priority of the Government should be to give it a try so that the deficiencies as well as good points of Gram Nyalyalaya Act could come to light and accordingly further remedial action be ensured. Till then we will have to keep faith in this Act which beckons hope for the ruralfolk who deserve justice delivery system at their doorsteps.

7. Annexures

In terms of Section 3(1) of the Gram Nyayalayas Act, 2008, it is for the State Governments to establishGram Nyayalayas in consultation with the respective High Courts. More than 5000 Gram Nyayalayas are expected to be set up under the Act. Around 194 such courts have been set up as on March 2015.

Table 1

S. No.	State Gram	Nyayalayas Notified till date
1	Madhya Pradesh	89
2	Rajasthan	45
3	Karnataka	2
4	Orissa	16
5	Maharashtra	18
6	Jharkhand	6
7	Goa	2
8	Punjab	2
9	Haryana	2
10	Uttar Pradesh	12
	Totle	194

***Source*:** PIB release of 10 March 2015 (http://pib.nic.in/newsite/erelease.aspx?relid=0)

Table 2: Some Judicial Systems in Post-Independence India

	Nyaya Panchayats	Lok Adalats	Gram Nyayalayas
Flourished	From pre- Independence.	1982 onwards	Proposed
Personnel	Elected by local electorate	Retired judges, volunteers	Nyayadhikaris selected by High Court
Norms Applied	Statute law	Not known	State law, conciliation
Maximum Penalty	Fines.	Enforced by court.	Imprisonment up to one year, fines.
Appeals Courts	No appeal	Asssistant sessions judge	senior civil judge
Representation	Self	Self, lawyers	Self, lawyers

Sources: Galanter & Krishnan for Nyaya Panchayats and Lok Adalats; Gram Nyayalayas Bill; PRS

2. Nyaya Panchayats vs. Gram Nyayalayas

On June 25, 2006 the Minister of Panchayati Raj, Mani Shankar Aiyar, announced the formation of a committee to prepare a Nyaya Panchayat draft Bill. Press reports suggest that the Law Ministry had expressed some objections. Table 2 compares the main characteristics of that draft Bill and the Gram Nyayalayas Bill, 2007.

Table 3: Nyaya Panchayats Draft Bill, 2006; Gram Nyayalayas Bill, 2007

	Nyaya Panchayats Draft Bill, 2006	**Gram Nyaylayas Bill, 2007**
Area coverd	At every panchayat area or	Panchayat at the intermediate level.
Number of Judicial	Five elected members, one reserved for a woman, and one post rotating between SC, ST, and OBC members. One Nyaya Sahayak to assist on points of law.	One nyayadhikari appointed by the state goverment
Minimum Qualifi- cation of Officers	Age 25 or above, not a member of local, regional or national political party.	From a cadre constituted by the govermnet having people of less than 45 years of age, with a law degree, knowledge of one language of the state other than English, and qualified to be a judicial magistrate.
Maximum Penalty	Only fine	One year's imprisonment, with or without a fine, or only a fine
Appeals	Appeal to Judicial Magistrate	Senior civil judge for civil cases; assistant sessions judge for criminal cases
Representation	Self or representative Bar on legal representation	Self, lawyers

Sources: Nyaya Panchayats Draft Bill, 2006; Gram Nyayalayas Bill, 2007; PRS

2. Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996

Gram nyayalayas have been functioning in Madhya Pradesh since 2000 under a state Act.13 These gram nyayalayas are different from those envisaged in the current Bill in a number of ways; these are detailed in Table 3.

Table 4: Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996; Gram Nyayalayas Bill, 2007

	Madhya Pradesh Gram Nyayalaya Adhiniyam, 2007	**Gram Nyayalayas Bill, 2007**
Area covered	Circle comprising of ten or more Gram Panchayats. In Scheduled areas a circle may consist of less than ten villages	Panchayat at the intermediate level
Number of Judicial Officers	Sever members nominated unanimously by Janpad	One nyayadhikari appointed by the state government
Minimum Qualifi- cation of Officers	Age 45 or above, ordinarily resident in Circle, passed matriculation (fifth standard in case of women, SC and ST members), and one person with elementary experience or knowledge of law	From a cadre constituted by the government having people of less than 45 years of age, with a law degree, knowledge of one language of the state other than English, and be qualified to be a judicial magistrate.
Maximum Penalty	Fine of Rs. 1,000	One year's imprisonment, with or without a fine, or only a fine.
Appeals	Before Class I Civil Judge for civil case; before Class I Judicial magistrate for criminal cases	Senior civil judge for civil cases; assistant sessions judge for criminal cases
Representation	Self.	Self, lawyers

Sources: The Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996; Gram Nyayalayas Bill, 2007; PRS

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