

The Gram Nyayalayas Bill, 2007

The *Gram Nyayalayas Bill, 2007*, provides for the establishment of *Gram Nyayalayas* for the purpose of providing access to justice – both civil and criminal – to the citizens at the grassroots level and to ensure that opportunities for securing justice are not denied to any citizen for reasons of social, economic or other disabilities and for matters connected therewith.

The Law Commission of India in its 114th Report on *Gram Nyayalaya* suggested its establishment so that speedy, inexpensive and substantial justice could be provided to the common man. The *Gram Nyayalayas Bill, 2007* is broadly based on the recommendations of the Law Commission. This parliamentary brief takes a close look at the pros and cons of the Bill.

The Bill at a Glance

Highlights

- ♦ The preamble of the Bill resonates Article 39A of the Indian Constitution which requires the State to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- ♦ The Bill focuses on the *panchayat* level (clause 4), covering both criminal and civil cases (clauses 14 and 15) and classifies the *Gram Nyayalayas* as the lowest court of subordinate judiciary in a state [clause 3(3)].
- ♦ It envisages day-to-day hearing [clause 33(9)], disposal of criminal cases within 90 days [clause 23(3)], pronouncing judgement within one week from the date of the last hearing [clause 24(1)] and instant judgement after hearing where recording of evidence is not required in any dispute or matter of a civil nature [clause 33(4)].
- ♦ It would assist in reducing the workload of the District Courts [clause 21(1)] and ensure justice for the poor at their doorsteps on payment of a nominal court fee of Rs100 in civil cases [clause 33(1)].
- ♦ The *Gram Nyayalayas* have been assigned the duty to make efforts for conciliation and settlement of civil disputes for which a panel of Conciliators has been proposed (clauses 31 and 32).
- ♦ The Bill proposes the *Gram Nyayalayas* to be guided by the principles of natural justice and not be bound by the procedure laid down in the Code of Civil Procedure, 1908 or the rules of evidence as laid down in the Indian Evidence Act, 1872 [clause 32(2)].
- ♦ The decision on an appeal against the order of the *Gram Nyayalayas* by the District Court shall be final in a civil case and no further appeal or revision has been provided for (clause 41).
- ♦ The *Nyayadhikari* shall periodically visit the villages under his/her jurisdiction and conduct proceedings in close proximity to the place where the parties normally reside, thus functioning as a mobile court.

Lowlights

- ♦ *Nyayadhikaris* are expected to take up cases based only on a complaint or a report from the police. No *suo moto* powers are laid down [clause 14(1)].
- ♦ Clause 24(2) lays down delivery of judgement to both parties free of cost but clause 33(12) speaks of payment of such fees as may be prescribed by the State Government for copies of the order.
- ♦ Clause 11(1) envisages the *Nyayadhikari* to visit villages 'periodically' without prescribing number of visits.
- ♦ No uniformity has been prescribed in appointment of Conciliators particularly regarding their qualifications, tenure, method of appointment and remuneration [clause 31(1)].
- ♦ *Nyayadhikari* who has been removed on the basis of incompetence is also barred from other appointments in Government [clause 8(2)].
- ♦ Tenure of service and transferability as *Nyayadhikari* should be laid down.
- ♦ The objective of ensuring speedy justice would be undermined through the provision for adjournments, which is the major cause for delay.
- ♦ The Bill has no provision to ensure that sufficient infrastructure and facilities would be provided by the State Government for the efficient functioning of *Gram Nyayalayas*.
- ♦ The Bill is silent on the pecuniary jurisdiction of the *Gram Nyayalayas*.

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Action Points

- ◆ There is a need for empowering *Nyayadhikaris* with *suo moto* powers. Such power is vital to ensure delivery of justice to the rural community in India.
- ◆ The dichotomy between clauses 24 (2) and 33 (12) should be addressed by letting the former prevail. Providing copies of judgements free of charge to both the parties would be in consonance with the spirit of the Bill.
- ◆ One of the main objectives of the Bill is to provide justice at the doorsteps and to meet the same, specific guidelines should be incorporated in respect of *Nyayadhikari's* visit for dispensation of justice through mobile courts at villages rather than leaving it to the discretion of the *Nyayadhikari*. Whenever a minimum number of cases pertain to a particular village, the hearing should be necessarily held on the spot [clause 11 (1)].
- ◆ To reduce nepotism and external interference and to provide skilled and just professionals, some minimum qualifications should be determined for the appointment of Conciliators (clause 31).
- ◆ *Nyayadhikari* who has been removed on the basis of incompetence should not be barred from other appointments in Government [clause 8(2)].
- ◆ The Bill is silent on the tenure of the *Nyayadhikari*. Perpetuity has its own demerits and the tenure and transferability of the *Nyayadhikari* should be built in (clause 9).
- ◆ Provisions in the Bill regarding adjournments [clause 33(9)] need to be reviewed to cut down on delays. To fulfil its basic objectives of speedy justice at the grassroots level, the Bill has armed the *Nyayadhikari* with directions 'not be bound by the procedure laid down in the Code of Civil Procedure, 1908' but to be guided by the principles of natural justice. Further, the *Gram Nyayalayas* have also been vested with powers to proceed *ex parte* if any of the parties does not appear [clause 33 (7)].
- ◆ The Bill calls for a high degree of coordination for implementation between the State Government and the High Court as the Table 1 substantiates. Provisions for ensuring the same in a time bound period would be a Herculean task and needs to be addressed.
- ◆ Pecuniary jurisdiction of the *Gram Nyayalayas* should be laid down.

Introduction

The judicial administration of the country is in a disturbing condition and requires numerous structural changes. Huge backlog of cases and inordinate delays in disposal of cases in courts at all levels coupled with exorbitant expenses have attracted the attention of not only the members of the Bar, consumers of justice, social activists, legal academia and Parliament but also the managers of the courts.

The Chief Justice of India, KG Balakrishnan, speaking at the inauguration of '*Nyaya Degula*' in Bangalore on June 21, 2007 lamented that there were 2.5 crore cases pending in subordinate courts, 58 lakh cases in various High Courts and 31,000 cases in the apex court. Earlier, the then Chief Justice of India had gone on record saying that the 'justice system as in vogue in this country is about to collapse' (Law Commission of India, 114th Report).

Mainly, the rural poor are victims of this state of affair of the judicial system and there is a need to give high priority of reformation of judicial administration within the rural mass. Hence, the Bill under discussion has been introduced, through which the *Gram Nyayalayas* to be set up would mark a departure from the functioning of existing courts and would follow an informal approach with an attempt to resolve the dispute by consensus, wherever possible. In principle, the Bill promises a large

number of ultimate benefits to the rural people, aiming to provide justice at their doorsteps, particularly to those who are financially weak and are unable to go outside the village for filing suits in the courts.

This Bill Blow up looks at the provisions of the Bill closely and brings into focus some suggestions that could be incorporated to make it more effective.

Gram Nyayalaya

The Bill provides for the establishment of *Gram Nyayalayas* for every *Panchayat* or for a group of contiguous *Panchayats* at the intermediate level throughout the country except the States of Jammu and Kashmir, Nagaland, Arunachal Pradesh, Sikkim and to the tribal areas in Assam, Meghalaya, Tripura and Mizoram.

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 *Gram Nyayalayas* will cover both civil and criminal cases of a simple nature as specified in the Schedule to the proposed legislation.

The *Nyayalayas* will follow summary procedure in criminal cases and a simple procedure having regard to the principles of natural justice in civil cases.

The proceedings in these *Nyayalayas* will be less expensive, free from protracted procedural wrangles, quick

and available at the grassroots level, accessible to the common man and render justice to him as enshrined in Article 39A of the Constitution.

Exclusions

The *Gram Nyayalayas* shall not have jurisdiction to take cognisance of the following classes of disputes:

- ◆ a dispute by or against the Central Government or the State Government or a public servant for anything which is in good faith done or purported to have been done by him in his official capacity;
- ◆ a dispute where one of the parties is a minor or a person of unsound mind; and
- ◆ any claim cognisable by revenue courts.

Further, the *Nyayadhikari*, in the interest of justice, may close a case and advise the parties to approach the appropriate civil court in respect of matters relating to any complicated issue of fact or of law which should be decided by any other competent court of law.

Nyayadhikari

The proposed *Gram Nyayalayas* shall be presided over by a *Nyayadhikari* who shall be qualified to be eligible to be appointed as a Judicial Magistrate of the first class and belonging to a cadre of *Nyayadhikaris* constituted by the Governor in consultation with the Chief Justice of the High Court. Preference,

Table 1: Provisions of Responsibilities for Implementation

Clause	Details	Responsibility
3	Establishing <i>Gram Nyayalayas</i> for every <i>Panchayat</i>	State
5 (2)	Appointment of <i>Nyayadhikari</i> and formation of its cadre	Governor and High Court
9	Salary, allowances, terms & conditions of the service of <i>Nyayadhikari</i>	State
11 (2)	Extending facilities, vehicles and security to <i>Gram Nyayalayas</i>	State
13	Defining local territorial jurisdiction of <i>Gram Nyayalayas</i>	State and High Court
22 (1)	Determining nature and category of staff and service conditions of staff of <i>Gram Nyayalayas</i>	State
26 (1)	Appointment of Advocates at <i>Gram Nyayalayas</i> for criminal cases	State
30 (1) & 47	Rules for conciliation of civil disputes and making other Rules	High Court
31	Appointment of Conciliators	State and High Court
33 (1, 2 & 12)	Provide rules for civil cases where required and determining court fee	State and High Court
43	Assistance of Police to <i>Gram Nyayalaya</i>	State

while appointing a *Nyayadhikari*, would be given as far as practicable, to the members of the Scheduled Castes (SCs) and Scheduled Tribes (STs), women and any other classes or communities as may be specified by the State Government from time to time.

Nyayadhikari's Tenure

The Bill is silent regarding the term of office of the *Nyayadhikari*. A fixed term with renewal and transferability is necessary. In addition, the Bill lacks clarity in respect of salary, allowances and other terms and conditions of the services of the *Nyayadhikari*. To ensure some uniformity throughout the country, provisions addressing the same would be vital and necessary.

Mobile Courts

The *Nyayadhikari* shall periodically visit the villages under his/her jurisdiction and conduct proceedings in close proximity to the place where the parties normally reside, thus functioning as a mobile court. However, mentioning 'periodical' visits to villages by the *Nyayadhikari* without prescribing number of visits might not serve the purpose. The Bill needs to prescribe a minimum number of visits to be made.

Conciliators

The Bill directs *Gram Nyayalayas* to make efforts for conciliation and settlement of civil disputes for which appointment of Conciliators by the District Judge in consultation with the District Magistrate has been envisaged.

However, no minimum qualification is prescribed for their appointment. There is a need for some kind of uniformity amongst the States in regard to qualification, tenure, method of appointment and remuneration of the Conciliators.

Since the Conciliators play a very important role, any disparity would not be conducive to their working. Sufficient incentives including enhanced remuneration should be paid to the Conciliators and preference in appointment should be given to those with legal background apart from having experience in social service. This is vital to reduce nepotism and interference and to provide better solutions to the people.

Speedy Justice

A deep-rooted problem in the functioning of the courts, particularly in the trial courts, is the granting of frequent adjournments, mostly on flimsy grounds. The Bill under clause 33(9) gives *Nyayalayas* the right to adjourn the hearing beyond the following day provided the necessary reasons are recorded in writing. This very provision would undermine the objective of ensuring speedy justice, as the Judges usually tend to act with unfettered discretion. The Bill has armed the *Nyayadhikari* with directions 'not be bound by the procedure laid down in the Code of Civil Procedure, 1908' but to be guided by the principles of natural justice.

Further, the *Gram Nyayalayas* have also been vested with powers to proceed *ex*

parte if any of the parties does not appear. To regulate the discretion, the Bill must lay down the exceptional circumstances when an adjournment may be granted.

Coordination

All the officers including the *Nyayadhikaris*, conciliators, local police officers, and other officials need to coordinate with each other for the effective implementation of the Act. They need to work together to ensure justice within the rural mass.

In particular, the Bill calls for a high degree of coordination for implementation between the State Government and the High Court as Table 1 substantiates. Provisions for ensuring the same in a time bound period would be a Herculean task and needs to be addressed rather than consigning them as administrative details or of procedures which can not be provided for in the Bill. The coordination of prescribed tasks should be within their powers as laid down and need to ensure that neither overrides the other. In other words, either of them should not influence the other.

Grounds for Removal

Incompetence is one of the grounds for removal from the office of *Nyayadhikari* as provided in clause 8(1). However, incompetence is not a crime. Hence, a *Nyayadhikari* who has been removed on the basis of incompetence should not be barred from other appointments in Government as stated in clause 8(2). His merits are to be acknowledged. The Bill

Box 1: CUTS Study on the Disposal of Consumer Cases

It has not been possible for any court to dispose cases within 90 days. For example, consumer courts under Consumer Protection Act (COPRA) have failed to implement the clause as revealed by a path-breaking research of CUTS International, Jaipur entitled, '*Rajasthan Mein Upbhoktaon Ki Sthiti*' (State of Consumers in Rajasthan). According to the study, in the year 2004-05, out of a total of 28908 cases filed in the Rajasthan State Commission, only 2208 cases were disposed between 90 to 150 days period, while 15369 cases were disposed after 150 days. Not a single case was disposed within the stipulated 90 days period, and 11331 cases remained unresolved even after one year. On March 31, 2005, the backlog of cases in consumer courts across Rajasthan stood at 23034, which shows that consumer cases have not been resolved under the COPRA within 90 days. Moreover, there are cases still pending before the State Commission and the District Forums for more than 10 years.

should incorporate a proviso that a *Nyayadhikari* who has been removed on the grounds of incompetence shall be ineligible for appointments within the judiciary but eligible for other appointments in Government.

Suo moto

As per the provisions of the Bill the *Nyayadhikaris* are entrusted to hear cases only based on a complaint or a report from the police. There should be a proviso for *suo moto* cases when the *Nyayadhikari* has reasons to believe that his/her intervention is required in the interest of justice. This is particularly relevant in those situations, which involve individuals or groups belonging to the marginalised sections of the society who do not have the financial or social resources to lodge legal complaints. Incorporating such a proviso would make the objective of this Bill more

relevant and particularly when such victims/aggrieved persons are women, children, persons of disability or from vulnerable communities.

Fee

The Bill takes a contradictory stand regarding the payment of fee by the parties to a dispute for obtaining copies of the judgment delivered by the *Gram Nyayalayas*. While clause 24(2) clearly states that the *Nyayalaya* shall deliver a copy of its judgment immediately to both the parties free of cost, clause 33(12) speaks about payment of fee for obtaining the same. In the interest of justice and to imbibe the very objective of this Bill it is vital that clause 24(2) of the Bill prevails over the later particularly when the Bill is targeted towards the economically weaker sections of the society.

Jurisdiction

The Bill is silent regarding the pecuniary jurisdiction of the *Gram Nyayalayas*, which needs to be specified. Empowering *Nyayalayas* to take up a dispute without any ceiling in the matter of pecuniary jurisdiction would be a risky venture as the *Nyayalayas* shall consist of *Nyayadhikaris* who hardly have any prior court experience. As per the proviso, *Nyayadhikari* shall be a person qualified to be eligible to be appointed as a Judicial Magistrate of the first class and the qualification requires for the same is just a bachelor degree in law with/without prior experience in the Bar. A pecuniary jurisdiction of a specific amount is needed.

Conclusion

By setting up of *Gram Nyayalayas* for every *Panchayat*, the constitutional goal is to make justice inexpensive, easily available, non-formal and substantial. But the quality of justice would finally depend upon the nature of the forum that will be set up ultimately to render justice. The Bill seeks to address on top priority the problem of tackling mounting arrears in courts through decentralisation of the system of administration of justice by providing for a participatory forum of justice within the Constitution.

It is felt that the suggestions given above will go a long way in realising the objectives of the Bill.

Other Bill Blowups

1. Competition Bill of India, 2001
A Right Step in the Right Direction
2. Communications Convergence Bill, 2001
3. Biological Diversity Bill, 2000
A blueprint for the monopolisation of biodiversity or its beneficial use?
4. The Infant Milk Substitutes... Amendment Bill, 2002
More a Formality than an Attempt to Address the Real Concerns?
5. 98th Constitutional Amendment Bill, 2003
Seeking to Create a National Judicial Commission
6. Small Enterprises Development Bill
A Step in the Right Direction?
7. Patent (Amendment) Ordinance, 2004
8. The National Rural Employment Guarantee Bill, 2004
9. The Petroleum and Natural Gas Regulatory Board Bill, 2005
10. The Competition (Amendment) Bill, 2006:
What needs to be done

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