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FROM NYAYA PANCHAYATS TO GRAM NYAYALAYAS: THE INDIAN STATE AND RURAL JUSTICE

Shishir Bail*

Legal reform attempts in India have frequently grappled with the problem of providing access to justice to rural litigants. In the early years of the Indian republic, the now infamous Nyaya Panchayats were tasked with this responsibility. These institutions were motivated by a desire to recreate an 'indigenous', panchayat based model of dispute resolution, but had more or less died out by the late 1970s. In 2008, the Parliament of India made a renewed attempt to address this problem through the passage of the Gram Nyayalaya Act, intended to result in the setting up of over 5,000 Gram Nyayalayas across the country. This article compares these two institutions to see whether Gram Nyayalayas make the same mistakes as their ill-fated forebears, or whether they do in fact represent a new approach to the problem of access to justice for rural litigants in India. This analysis reveals that Gram Nyayalayas differ substantially from Nyaya Panchayats, and in fact share far more similarities with the formal court system than to any poorly specified ideas of indigenous dispute resolution.

INTRODUCTION

In the roughly sixty-seven years since Indian independence, the Indian legal system has gone through numerous ups and downs and the results have been mixed.¹In

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1 In addition to a general crisis of acceptance, the formal Indian court system has also suffered observable problems of case delay, backlog and quality. For discussions of the problems with respect to the Higher Judiciary see R. DHAVAN, LITIGATION EXPLOSION IN INDIA (1986) and N. Robinson, *A Quantitative Analysis of the Indian Supreme Court's Workload*, 10(3) Journal of Empirical Legal Studies 570 (2013).

this time, various diagnoses of both the problems as well as solutions have been offered. Some views pose the problem as primarily one of case backlog and delay; one which can only be remedied by an increase in judicial capacity.² Other views have criticised the substantive outcomes produced by the system and have cast doubt on its ability to deliver access to justice and the rule of law for the poor.³ Alongside these, there is a third kind of critique that has been heard almost since the inception of the Indian legal system. This critique is based on the idea that the Indian legal system is ‘alien’, having been introduced by the British colonial administration. This critique further argues that rather than the reform of this legal system, what is needed is a return to ‘indigenous’ processes of dispute resolution.⁴

Though the formal court system has remained much the same since independence, these ideas of ‘indigeneity’ have at different times inflected debates on legal system reform in India. The fact that many reform attempts have invoked, in one form or another, visions of ‘traditional’, ‘indigenous’ dispute resolution is proof of their continuing currency among India’s legal policy establishment.⁵ Though there are various examples of this, possibly the most notable of such forums were Nyaya Panchayats. These forums, in sum and substance, attempted to bring ideas of traditional, ‘panchayat-based’ dispute resolution into the formal legal system. They were also meant to provide a decentralised, accessible, somewhat particularistic mode of dispute resolution for persons living in rural areas. Though introduced

For some of the problems with the lower judiciary see R. Moog, *Delays in the Indian Courts: Why the Judges Don’t Take Control*, 16(1) JUSTICE SYSTEM JOURNAL 19 (1992) and LAW COMMISSION OF INDIA, 77TH REPORT: DELAYS AND ARREARS IN TRIAL COURTS (1978).

- 2 A useful overview of the numerous Government reports emphasising supply-side solutions to the problem of backlog is provided by K. Hazra & M. Micevska, *The Problems of Court Congestion: Evidence from Indian lower courts*, in A. K. HAZRA AND B. DEBROY, JUDICIAL REFORM IN INDIA: ISSUES AND ASPECTS 137, 141-2 (2007).
- 3 See for instance P. Baxi, *Access to Justice and the Rule of [Good] Law: The Cunning of Judicial Reform in India* (Institute of Human Development New Delhi on behalf of the UN Commission on the Legal Empowerment of the Poor, Working Paper, 2007) and S. MURALIDHAR, LAW, POVERTY AND LEGAL AID: ACCESS TO CRIMINAL JUSTICE (2004).
- 4 See Marc Galanter, *The Aborted Restoration of ‘Indigenous’ Law in India*, 14 COMPARATIVE STUDIES IN SOCIETY & HISTORY 53 (1972) for an examination of these kinds of critique both before and immediately after independence. The continuing salience of these ideas is evident in the legislative debate surrounding the Gram Nyayalaya Act as we show subsequently.
- 5 Some earlier instances of these are Nyaya Panchayats, discussed in more detail subsequently, and Lok Adalats.

around the time of Indian independence, by the late 1970s these forums had all but vanished in most of the states in which they had operated.

After their extinction, the District and Taluka courts were the only state forums for dispute resolution available to rural litigants for many years. This situation continued until 2008, when the Parliament of India passed the Gram Nyayalayas Act. This Act sought once more to create a system of decentralised and accessible judicial institutions for rural litigants at the village level. At the time of the passage of the Act, over 5,000 of these institutions were sought to be established, one for each Taluka in the country.

Like Nyaya Panchayats, Gram Nyayalayas are intended to occupy the lowest tier of the judicial hierarchy. Further, after Nyaya Panchayats, Gram Nyayalayas are the next attempt by the Indian State to provide rural litigants access to village level judicial institutions. For these reasons, the creation of these institutions gives rise to a series of questions: do Gram Nyayalayas, like Nyaya Panchayats, also attempt to recreate 'indigenous' or 'traditional' forms of dispute resolution? How do these institutions differ from Nyaya Panchayats? These are the questions that this paper engages with.

To answer these questions, this paper proceeds in the following manner. First, it provides some context to demands for a return to 'indigenous' dispute resolution in the Indian legal system. This is done by looking specifically at the category of the 'village panchayat'. At various points in the history of legal reform in India the 'village panchayat' has been put forward as the ideal, traditional form of dispute resolution that must be returned to. Nyaya Panchayats are in many ways a concrete manifestation of the 'village panchayat' idea of dispute resolution. The paper argues that the failure of these institutions represents the unviability of this idea in designing institutions for rural justice reform.

From there, the paper moves on to study the recently established Gram Nyayalayas. First, the paper examines the structure of these institutions by looking at the 114th Law Commission Report, which first recommended the creation of these institutions, and the Gram Nyayalayas Act of 2008. Thereafter, the paper discusses the results of field-work conducted on three Gram Nyayalayas in the months of June and July 2013. The paper argues that in structure as well as functioning, Gram Nyayalayas represent a move away from the 'village panchayat'

ideal of dispute resolution. For the most part, they are best seen as an expansion of the formal court system to geographically remote areas.

I. THE CONTEXT OF RURAL JUSTICE REFORM IN INDIA

It is widely known that at the time of Indian independence, the Constituent Assembly charged with drafting the new Constitution was divided on the question of whether or not to sanction the continuation of the British Indian Legal System, consisting in the main of the multi-level system of courts. Within the Constituent assembly, there were a number of voices, led notably by M.K Gandhi, who advocated the discarding of this system in favour of a de-centralised, informal system constructed on 'indigenous' lines. As things transpired, the latter option was rejected conclusively by the Constituent Assembly in favour of the maintenance of the system of Courts; the Constitution of India mandates the establishment of a detailed hierarchy of Courts starting from the district judiciary at the bottom and rising all the way up to the Supreme Court of India.⁶

While the Constituent Assembly decided to go ahead and carry on with the system of formal courts, voices in favour of a return to 'indigenous' dispute resolution processes as a possible solution have never really died down. Following on from Gandhi, there have been those who have continually asserted that the British inspired legal system, with its emphasis on adversarial litigation is unsuited to the sensibilities and historical tendencies of the Indian people towards simple, conciliatory processes.⁷ Frequently, the 'village panchayat' is invoked as the ideal form of indigenous dispute resolution suitable to Indian society.

Nyaya Panchayats are projected as a concrete manifestation of this ideal. It is important therefore to understand both the content of the village panchayat ideal, as well as its operationalization through Nyaya Panchayats.

The Village Panchayat

The Law Commission of India in its 14th Report provides us with a succinct statement of a widely held view of the role of the 'village panchayat' in Indian history:

6 For a careful account of this process see Marc Galanter, *The Displacement of Traditional Law in Modern India*, 24 JOURNAL OF SOCIAL ISSUES 65 (1968).

References to village panchayats abound in ancient literature and later historical accounts. In the structure of society as it existed in those days, the panchayat was the creation of the villagers themselves and was composed of persons who were generally respected and to whose decisions the villagers were accustomed to give unqualified obedience. It does not appear that these panchayats were brought into existence by the authority of the ruler. Except in matters of general importance, the ruler seems to have left the villagers to govern themselves and, among other things, the villagers assumed the responsibility for the settlement of disputes among themselves. It has, however, to be remembered that the disputes which these panchayats were called upon to determine were simple disputes between one villager and another; disputes that would otherwise have tended to disrupt the rural harmony. The village in those days was more or less self-contained and self-sufficient, the villagers being in a considerable measure dependent on themselves. In such a condition of affairs, it was not unnatural that the panchayats should have exercised a great measure of authority and commanded the willing allegiance of the people.⁸

This description of the function of the village panchayat seems to follow from earlier bureaucratic accounts of their existence and functioning. The Civil Justice Committee of 1924-25 (The Rankin Committee) discusses in some detail the existence of village panchayats and makes careful recommendations about conferring them jurisdiction in civil and criminal disputes.⁹

The view of the Law Commission of India is based upon an idea of the Panchayat as constituted territorially at the village level. These panchayats are ostensibly created by villagers themselves and are made up of persons who are 'generally respected'. This view suggests that village communities consist of individuals who all have an equal say in the constitution of panchayats. On the face of it, this is a perfect picture of small, liberal democracies, which are taken to be self-evident parts of traditional Indian culture. This is a view long held in debates on panchayats

7 For an excellent discussion of these voices from the time of Indian independence onwards, see M. Galanter, *supra* note 4.

8 LAW COMMISSION OF INDIA, 14TH REPORT: REFORM OF THE JUDICIAL ADMINISTRATION, 874 (1958).

9 CIVIL JUSTICE COMMITTEE, 1924-25 REPORT, 105 (Government of India Central Publication Branch, 1925).

as instruments of justice in India; Cohn traces this back to Thomas Metcalf's description of village communities as 'little Republics' in 1830.¹⁰

What is striking about this view is the absence of any mention whatsoever of the constitutive importance of group status, hierarchy and caste in the constitution of these panchayats. This idea of the 'village panchayat' has been powerfully critiqued, among others, by Louis Dumont. He argues that at the time of the British invasion, there were no 'village panchayats' distinct from caste panchayats.¹¹ Further, he shows that all matters of general importance in a village were first and foremost matters for the dominant caste.¹² The pre-eminence of the dominant caste panchayat in deciding matters of general importance is confirmed by other anthropological studies of disputes in rural India.¹³ Hierarchy and group identity are well established to be important parts of the panchayat process, and to have a direct bearing on the adjudication of different disputes.¹⁴

In contrast, the 'village panchayat' view takes rural society to be made up of inherently peaceful, equal individuals only interested in the amicable settlement of disputes. In short, this view emphasises the inexpensive, decentralised and particularistic nature of panchayat dispute resolution, without acknowledging the vastly different normative bases on which these institutions rest. At best, the village panchayat dispute resolution ideal is an inaccurate representation of the true nature of panchayat dispute resolution. Even so, this view has remained influential in debates on Indian legal reform. Nyaya Panchayats are the best example of this.

Nyaya Panchayats – An Introduction

The Royal Commission on Decentralisation in 1907 was the first to highlight the constitution and development of village panchayats with administrative powers and jurisdiction in 'petty' civil and criminal cases.¹⁵ The first state to introduce

10 B. S. Cohn, *Anthropological Notes on Disputes and Law in India*, 67(6) AMERICAN ANTHROPOLOGIST 82, 96 (1965).

11 L. DUMONT, HOMO HIERARCHICUS: THE CASTE SYSTEM AND ITS IMPLICATIONS, 172 (1980).

12 *Id.*, at 171.

13 Robert M. Hayden, *A Note on Caste Panchayats and Government Courts in India: Different Kinds of Stages for Different Kinds of Performances*, 22 JOURNAL OF LEGAL PLURALISM 43 (1984).

14 Cohn, *supra* note 10, at 96.

15 Law Commission of India (1958), *supra* note 8, at 874.

these panchayats through legislation was Madras through the Village Courts Act of 1888. This was followed up by most of the other states in the country at that time.¹⁶ Each state enactment contained minor differences in terms of constitution and jurisdiction, however to a large extent the jurisdiction of these tribunals in civil cases was restricted to (1) suits for money due on contract; (2) suits for recovery of movable property; (3) suits for compensation for wrongfully taking movable property and (4) suits for compensation for damage caused by cattle trespass. Suits relating to immovable property were taken out of the jurisdiction of Nyaya Panchayats completely; in many States the pecuniary value of suits triable by these forums was kept as low as Rs. 25 or Rs. 40.¹⁷ These panchayats were given jurisdiction over a large number of criminal offences under the Indian Penal Code. Generally, Nyaya Panchayats did not have the power to order periods of incarceration, and could only impose a fine at worst.¹⁸ Members of the Nyaya Panchayats in most states were appointed through the process of election. These elections were either direct, or involved variations of indirect election and nomination.¹⁹ Each Nyaya Panchayat was generally set up for a group of villages (usually 7-10 villages).²⁰ Nyaya Panchayats were generally exempted from strictly observing the procedures contained in the Codes of Civil and Criminal Procedure, as well as the Indian Evidence Act. Lawyers were completely barred from appearing before Nyaya Panchayats in most states.²¹

Nyaya Panchayats therefore contained many of the hallmarks of the village panchayat ideal. They were exempted from strict procedural rules, employed popularly elected adjudicators and were located geographically close to parties, at the village level. The non-application of procedural rules would allow the use of customary processes of hearing disputes. The presence of popularly elected leaders would ensure that they were 'generally respected' by the population, and therefore

16 The Law Commission of India in its 14th Report provides a useful list of the individual states and enactments. Law Commission of India (1958), *supra* note 8, at 878.

17 These equate to roughly Rs. 1,250 or Rs. 2,000 in 2013 money. Law Commission of India (1958), *supra* note 8, at 882.

18 Law Commission of India (1958), *supra* note 8, at 884.

19 See U. Baxi & M. Galanter, *Panchayat justice: an Indian experiment in legal access*, 3 ACCESS TO JUSTICE: EMERGING ISSUES AND PERSPECTIVES 343 (1979) for a discussion of the various methods.

20 *Id.*

21 Law Commission of India (1958), *supra* note 8, at 883.

that their decisions were valued and adhered to. If the village panchayat ideal is to be believed, these institutions captured the essential features of indigenous dispute resolution in India. Why then, did they fail so miserably?

Baxi and Galanter argued that many of the problems with Nyaya Panchayats stemmed from the ambiguity around their exact nature and their role in the judicial and political systems.²² They point out that already by 1970, the workload of Nyaya Panchayats in some states had fallen considerably.²³ In Uttar Pradesh total filings had dropped from 91,107 in 1961 to 35,865 in 1970. In the same time, filings in the formal civil and criminal courts had risen consistently; the situation was similar in Bihar. While national level studies by the Law Commission (1958) and the Study Team on Nyaya Panchayats²⁴ (1962) saw great promise in these institutions, results reported by studies in individual states were much less sanguine. Reports in Maharashtra and Rajasthan recommended the abolition of these institutions altogether, both for different reasons.²⁵

By the time of Meschievitz and Galanter's 1982 study, actual sightings of Nyaya Panchayats were already infrequent in the state of Uttar Pradesh.²⁶ They described some of the difficulties and absurdities caused by the structure of the Nyaya Panchayat system. Aside from problems with funding and overlapping jurisdiction, some problems were a product solely of the unique Nyaya Panchayat structure. Chief among these was that Nyaya Panchas (the adjudicators) were required to stick as far as possible to the letter of the substantive law, when in fact most were

22 Baxi & Galanter *supra* note 19, at Part III.

23 Baxi & Galanter *supra* note 19, at Part II E.

24 REPORT OF THE STUDY TEAM OF NYAYA PANCHAYATS (Ministry of Law, Gov't of India, 1962) as cited in Baxi & Galanter, *supra* note 19.

25 The report of the Rajasthan Committee attributed the failure of Nyaya Panchayats in that State to the separation of the judiciary and the executive at the 'grassroots level'. It accordingly recommended that the jurisdiction to hear disputes be granted to the ordinary Gram Panchayat. On the other hand, the Maharashtra Committee was concerned that these institutions were not gaining much support and were hence moribund, but more damagingly, argued that their presence was in fact harming already existing modes of informal, non-state dispute resolution. On these grounds, it recommended their abolition as soon as possible. Both states finally abolished Nyaya Panchayats in 1975. See REPORT OF THE HIGH POWERED COMMITTEE ON PANCHAYATI RAJ (Government of Rajasthan 1973) and REPORT OF THE EVALUATION COMMITTEE ON PANCHAYATI RAJ (Government of Maharashtra 1971) as cited in Baxi & Galanter, *supra* note 19, at Part II F.

26 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).

not highly literate; the only requirement to be recruited as a Nyaya Pancha being a minimum age of 30 years and the ability to read and write in Hindi. As a result, most Nyaya Panchas failed to sufficiently understand the legal provisions they were to apply. Further, Nyaya Panchas were expected to fulfil an incredibly complex role; treading a delicate balance between textual law and local custom, remaining honest, upright and impartial, sensitive to the needs of parties, fair in reaching suitable compromises, forceful in levying and collecting fines, all without compensation or the necessary means to do so.²⁷

For these reasons, Meschivitz and Galanter were strongly pessimistic of the continued existence of Nyaya Panchayats and described them as ‘institutionally weak and moribund.’²⁸ They attributed this state of affairs to the indiscriminate use by Indian policy makers of the ‘panchayat ideology’, which was deployed in an effort to avoid serious engagement with the nature of disputes and law in rural India.²⁹ They describe the panchayat ideology in the following terms:

More recently, Galanter and Krishnan have suggested that Nyaya Panchayats failed because they represented an unappetising combination of the formality of official law with the political malleability of village tribunals.³⁰

The Nyaya Panchayat experience holds valuable lessons for the design of rural justice reform in India. These were an attempt to recreate an idealised traditional institution, the village panchayat, and at the same time imbue them with an adherence to the enacted substantive law of the country. As we have seen earlier, the village panchayat ideal itself was based on a dubious vision of the nature of law and disputes in rural India. The failure of Nyaya Panchayats shows that at least in this form, demands for a return to indigenous processes of dispute resolution are unlikely to be fruitful.

28 Meschivitz & Galanter, *supra* note 26, at 70.

29 They describe the panchayat ideology in the following terms:

“This ideology is one component of the politics of rural justice in India. It offers a set of formulas by which to portray social reality; it enables politicians and legal policymakers to appeal for public support without promising action. The panchayat ideology is one that politicians and legal policymakers can safely support without having to implement an effective Nyaya Panchayat system (much less committing them to use such a system themselves)” Meschivitz & Galanter, *supra* note 26 at 57.

30 M. Galanter & J. K. Krishnan, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, 55 HASTINGS LAW JOURNAL 789, 793 (2004).

II. GRAM NYAYALAYAS

The previous part of this paper showed that Nyaya Panchayats, relying on the 'village panchayat' ideology, represented an unviable approach to rural justice reform. Do Gram Nyayalayas commit the same folly? If not, how do they depart from the earlier model? These are the questions with which this part engages.

Gram Nyayalayas – A short history

The creation of Gram Nyayalayas was first suggested by the Law Commission of India in 1986 in its 114th Report. A quick perusal of the Law Commission of India's 1986 report on Gram Nyayalayas alerts one to their stated desire to move away from the Nyaya Panchayat model.³¹ The first major thrust of the report was towards the idea of participatory justice. The Law Commission identified the 'alien' nature of the Indian legal system as one of its biggest drawbacks.³² Following from this, the Law Commission stresses the need for persons adjudicating disputes to be knowledgeable of local conditions and culture. In order to achieve this, the Commission settled on a model of a rural court manned by a three member panel. This panel was to be headed by a judicially trained officer, accompanied by two lay-judges.³³ While the judicial officer would be selected from the cadre of judges maintained by each State, the lay-judges were to be appointed through the process of selection by a panel consisting of the District Magistrate and the District and Sessions Judge. Unlike Nyaya Panchayats therefore, there was no component of democratic election to the Gram Nyayalaya.³⁴ Still, the Law Commission appeared to be convinced of the benefits of lay-adjudication.

The Law Commission declined to specify a pecuniary limit for the proposed Gram Nyayalayas. Instead, in civil cases they simply specified a list of types of subject matter that Gram Nyayalayas would have jurisdiction over. Generally speaking, this was more expansive than the jurisdiction awarded to Nyaya

31 This was even though 'strengthening in rural areas the institutions of Nyaya Panchayats' was one of their terms of reference. LAW COMMISSION OF INDIA, 114TH REPORT: GRAM NYAYALAYA, 1(1986).

32 "It has till today remained an alien system which has no living contact with the masses and is not meaningful to them." *Id.*, at 7.

33 Law Commission of India (1986), *supra* note 31, at 19.

34 Law Commission of India (1986), *supra* note 31, at 20.

Panchayats.³⁵ The Law Commission was also in favour of granting Gram Nyayalayas wider jurisdiction in criminal matters than had earlier been the case with Nyaya Panchayats, due to the presence of the proposed judicial member on the panel of judges in the Gram Nyayalaya.³⁶ Further, the Law Commission proposed a simplified procedure in civil cases, through the exclusion of the Civil Procedure Code and the Indian Evidence Act. In criminal cases the Criminal Procedure Code would still be applicable.³⁷ Lawyers were not to be barred. Notably, Gram Nyayalayas would be mobile, in the sense that they were to travel to the sites of individual disputes. This was intended as a solution to the problems of collecting evidence.³⁸

On the whole, the Law Commission intended to create a forum which combined some of the important features of both the formal courts, as well as institutions such as Nyaya Panchayats.

The Gram Nyayalayas Act of 2008

The Gram Nyayalaya Act of 2008 incorporates some of the features suggested by the Law Commission Report. As an example, Gram Nyayalayas are to remain 'mobile' and conduct periodic visits to the villages within their jurisdiction. Some of the Law Commission recommendations are however ignored completely. Absent is the idea of 'participatory' justice that formed an important part of the Law Commission's model. In sum and substance, the Act of 2008 contains many significant departures from the Nyaya Panchayat model, as well as from the Law Commission Report of 1986. Some of these are as follows:

Lay-adjudication: Nyaya Panchayats as well the Law Commission Report of 1986 laid a lot of stress on the need for lay-adjudicators in rural disputes. This was because these persons were thought to be more knowledgeable about local custom and practices. In sharp contrast, the Act of 2008 establishes that each Gram Nyayalaya will be headed by a single Nyayadhikari, who must possess the

35 For instance, Gram Nyayalayas were to hear disputes pertaining to immovable property. These were excluded from the jurisdiction of Nyaya Panchayats altogether. Law Commission of India (1986), *supra* note 31, at 27-28.

36 Law Commission of India (1986), *supra* note 31, at 28-29.

37 Law Commission of India (1986), *supra* note 31, at 31-34.

38 Law Commission of India (1986), *supra* note 31, at 31.

qualifications of a Judicial Magistrate of the First Class.³⁹ This means that at the very least, a Nyayadhikari must possess a law degree. This appears to be a rejection of the promise of lay-adjudication, in favour of adjudication by professional judges.

Procedure to be followed: Nyaya Panchayats were generally completely exempted from applying the procedural law. The Law Commission prescribed simplified procedures for Gram Nyayalayas in civil cases, and the reduced application of criminal procedure in criminal cases. By contrast, the Gram Nyayalayas Act of 2008 retains the applicability of the Code of Criminal Procedure 1973, to all criminal cases before it. This is subject to the caveat that all cases will first be heard through the summary trial procedure. If the Nyayadhikari deems it necessary, they may be re-heard through the regular trial procedure.⁴⁰ In civil cases, the Act prescribes a procedure that departs in some substantial respects from the Code of Civil Procedure, 1908. For instance, Section 24(6) of the Act declares that for any incidental matter arising during a civil trial, the Gram Nyayalaya may adopt such procedure as it deems just and reasonable in the interest of justice. In both civil and criminal cases, Gram Nyayalayas are not bound by the provisions of the Indian Evidence Act. Section 30 of the Act allows the Gram Nyayalaya to 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 relevant or admissible under the Indian Evidence Act, 1872. In sum, while the procedure in Gram Nyayalayas departs in some important respects from the main procedural codes, there are also substantial similarities, especially in criminal trials. It is also worth noting that in civil cases the Act gives substantial latitude to the State Government and High Court to decide the form and manner of pleadings.⁴¹

Legal Representation: Most Nyaya Panchayat legislations expressly barred the presence of lawyers, who were seen as fomenting litigation and encouraging vexatious claims. In stark contrast, the Gram Nyayalayas Act makes no attempt to bar the presence of legal representation. Adversarial adjudication is very much a part of the Gram Nyayalaya's mandate; this is clear also from the 1986 Law

³⁹ Sections 5 and 6, Gram Nyayalayas Act, 2008.

⁴⁰ See Sections 18 and 19.

⁴¹ See Section 24.

Commission Report. Coupled with the rejection of the idea of lay adjudication, it appears clear that Gram Nyayalayas embrace a professional model of justice delivery and dispute resolution.

The Act makes it mandatory for the Gram Nyayalaya to first attempt to resolve civil disputes through conciliation.⁴² The procedure for conciliation is determined by the High Court, and each Gram Nyayalaya is required to maintain a panel of conciliators for this purpose.⁴³ Though the Act does not specify this, it is reasonable to assume that disputes that cannot be resolved through conciliation will still be adjudicated upon.

In the structure established by the Act therefore, there is minimal homage paid to the many elements of the panchayat ideology. The Gram Nyayalayas Act adopts a model of adversarial adjudication by professional judges, with parties represented by legal professionals. Aside from this, Gram Nyayalayas have a wider jurisdiction in both civil and criminal cases than was enjoyed by most Nyaya Panchayats. Though civil cases are meant to be conciliated first, the provisions of the Act retain a bedrock of adversarial proceedings. This is a significant departure from the village panchayat ideal of consensual, and amicable dispute resolution.

This being the case, the legislative debates on the Gram Nyayalayas Bill of 2008 are instructive of the continuing appeal of the village panchayat ideal. Many members of the Rajya Sabha, most notably Kalraj Mishra, strongly advocated a rejection of the Gram Nyayalaya Bill in favour of a return to 'traditional' processes.⁴⁴ A popular proposal was the conferring of jurisdiction to hear disputes on the elected Gram Panchayat.⁴⁵ Significantly, these efforts were unsuccessful. Even at the time of its inception then, there was an understanding in the legislature that Gram Nyayalayas signified a move away from traditional processes, rather than an attempt to recreate them.

42 See Section 26.

43 See Section 27.

44 RAJYA SABHA PARLIAMENTARY DEBATES, SESSION NUMBER 214, p. 243 (December 17, 2008).

45 For instance, see the intervention made by Shantaram Laxman Naik (INC). *Id.*, at 234.

Gram Nyayalayas in Action

Notwithstanding the legal structure of these institutions as discussed above, a more textured understanding of their character can only be obtained through an account of their actual functioning. Significant questions remain, such as the following:

- How do the provisions mandating professional representation, adjudication and increased procedural requirements in Gram Nyayalayas operate? Do they protect against a return to the model of dispute resolution seen in Nyaya Panchayats?
- What role do the conciliation provisions in the Gram Nyayalayas Act play in this process?
- What kinds of cases do Gram Nyayalayas hear?

To answer these questions, this section describes the results of field research undertaken on three Gram Nyayalayas in the months of May and June 2013. The three Gram Nyayalayas chosen for this study were in the Indian states of Rajasthan, Maharashtra and Madhya Pradesh. Specifically, in Rajasthan the Gram Nyayalaya studied was located in Bassi Taluka, part of Jaipur District. In Maharashtra the Gram Nyayalaya was in Haveli Taluka, part of Pune District. The last Gram Nyayalaya studied, in Madhya Pradesh, was in Gwalior Taluka, part of Gwalior District. The number of Gram Nyayalayas operationalised across the Country is far short of the intended figure; the three states chosen for this study were the three states that had operationalised the most Gram Nyayalayas in the Country.⁴⁶ On the basis of preliminary research, these appeared to be the only States to approach the creation of Gram Nyayalayas with any seriousness.⁴⁷ Madhya Pradesh in particular is the only State in the Country that has made a sizeable investment in Gram Nyayalayas.

46 Madhya Pradesh leads all others by a long way in this respect, with 89 Gram Nyayalayas operationalized in that state alone as on September 2012. Rajasthan had the second highest number, with 45. Maharashtra reported the third highest number, with 9. RAJYA SABHA WRITTEN ANSWERS TO UNSTARRED QUESTIONS, SESSION NUMBER 225, p. 145 (March 19, 2012)

47 Though other states, such as Kerala, have sanctioned the creation of further Gram Nyayalayas subsequently, none of these have yet become operational.

Each Gram Nyayalaya was observed through the course of one day of hearing.⁴⁸ In addition, interviews were conducted with the presiding Nyayadhikaris as well as lawyers appearing for the parties. The parties themselves were not spoken to directly. The following paragraphs describe the results of these observations.

Judges, Lawyers and Procedures: an Emphasis on Professional Justice Delivery

As discussed earlier, the Gram Nyayalayas Act departs significantly from the Nyaya Panchayat model in its prescription of professionally qualified judges, and the presence of legal representation. Section 6 of the Act mandates that a Nyayadhikari must have the same qualifications as a Judicial Magistrate of the First Class. Conceivably, this could be interpreted to include persons outside the formal judicial structure but possessing the necessary qualifications: eg., practising lawyers, retired judges and so on.

However, all the three Gram Nyayalayas we observed were manned by sitting members of the judiciary in their respective States. Further, these Gram Nyayalayas were in fact already existing courts of the Judicial Magistrate First Class, which had been additionally named as Gram Nyayalayas. So, on most days of the week or month, these were ordinary court rooms at the District or Taluka court complex. On certain designated days, they would travel out and make village visits. This was how their 'Gram Nyayalaya' function was fulfilled. Second, at least two of the three Gram Nyayalayas shared their docket of cases with the Magistrate's Court. What this means is that the 'Nyayadhikaris' heard the same cases in the Gram Nyayalaya as in their parallel capacity as Judicial Magistrates First Class. In all three cases, their dockets were made up predominantly of criminal rather than civil cases. We discuss this in more detail presently. On these grounds at least, the title of Gram Nyayalaya appeared to be more a nominal category than the mark of a truly novel institution.

All three Gram Nyayalayas were attended, to lesser or greater degree, by lawyers. The Gram Nyayalaya at Bassi was located within the same complex as the other Taluka courts, and was therefore easily accessible to the lawyers who worked in the area. The situation was slightly different in Haveli and Gwalior, where the Gram Nyayalaya was convened at the Gram Panchayat office of the village it was

48 The Gram Nyayalaya at Bassi was observed only for half a day.

visiting. This made it somewhat difficult for lawyers to attend these proceedings. The few lawyers who did attend were thoroughly disparaging of the fact that they had to travel long distances to do so. In Haveli, out of the 11 cases that were heard on the day we attended, only one defendant was represented by a lawyer. In Gwalior, the same lawyer appeared for the defendants in 3 out of the 7 cases that were heard on the day. In all these cases, an adjournment was sought and received.

How did the presence of sitting judges and qualified lawyers affect the manner of proceedings in Gram Nyayalayas? In 10 out of the 11 cases we observed in Haveli, the defendants were not represented by lawyers. These cases were all decided summarily, with the accused pleading guilty to the charges against them. Generally, these were minor public order offences involving a maximum punishment of a fine or a small period of imprisonment. In these cases, after pleading guilty the defendants were ordered to pay a fine. They duly deposited this fine with a Court Official entrusted with this task and left. The 11th case involved a slightly more serious offence with a maximum punishment of imprisonment for 3 years. Here, the accused was represented by a lawyer. In this case, the public prosecutor present there examined his main witness, the police constable who registered the case. Thereafter, the witness was cross-examined by the defence lawyer. After a short deliberation and final arguments on both sides, the case was decided and the defendant was acquitted.

The 10 cases in which the accused pleaded guilty were 'petty offences' under the Criminal Procedure Code, 1973. These are offences punishable only by a fine, up to a maximum of Rs. 1000. Petty offences may also be tried summarily, under Chapter XXI of the Criminal Procedure Code. In these cases it did not appear that the judge was unduly influencing or coercing the defendants into pleading guilty; most cases lasted a maximum of 3-4 minutes. It appeared quite clear that in these cases the defendants had arrived with the intention of pleading guilty, paying the fines, and having their cases finally closed. Assuming that those who pleaded guilty actually believed themselves to be so, the process in the Gram Nyayalaya appeared to adhere reasonably to the applicable procedural law. In the other case, the trial was conducted in largely the same manner as in any other Magistrate's Court. The lawyer for the defendant was allowed to fully present their claims,

and eventually they were acquitted for a lack of evidence. The procedure in both these kinds of cases then followed quite closely the procedure to be followed in the formal courts.

More interestingly, the judge and lawyers were dressed in full court dress. The judge was dressed in his gown, as were the lawyers. For all external observers then this was an ordinary court, albeit in an extraordinary location.

The story was only marginally different in Gwalior. On the day we attended the hearings, only seven cases were called and heard. In a number of other cases, parties' names were called out but none appeared. We were told that this was an extraordinarily low figure. In four out of these seven cases, the defendants appeared themselves. The three remaining cases were all handled by one lawyer, who sought adjournments in all three. Though we were not able to observe any cases being heard and decided, it was telling that in the cases that we saw adjournments were easily sought for and given. If anything, this was more emblematic of one of the frequently invoked pathologies of the formal court system than anything else. Further, all the seven cases called that day were criminal cases stemming from motor accidents.

We were not able to observe any cases being heard in Bassi. Still, some aspects of the Gram Nyayalaya there were indicative of the likely nature of functioning. The Gram Nyayalaya itself was constructed as an additional court-room in the Taluka court complex, replete with a bench for the judge, witness stands, and galleries for parties and their families. Aside from the sign at the entrance, there was not much to distinguish this court room from the others in the court complex. Conversations with the Nyayadhikari further confirmed this impression. He indicated that while the Gram Nyayalaya used to make village visits earlier, that practice had more or less stopped. Cases were now heard exclusively in the designated court-room, and proceedings were much the same as any of the other courts in the court complex.

None of the three Gram Nyayalayas we visited either maintained a panel of conciliators, or regularly referred cases to conciliation. Both of these are mandated by the Act in civil cases; this seemed to be a generally ignored feature of the structure prescribed by the Act. All cases in these Gram Nyayalayas were heard and decided by the Nyayadhikari.

Caseloads

The absence of conciliation proceedings in Gram Nyayalayas becomes more easily explicable when looking at the caseloads of these institutions. From the disparate sources of data available, it is quite clear that these institutions hear overwhelmingly more criminal cases than civil cases.

For instance, there were a total of 1,603 cases pending before the Gram Nyayalaya at Bassi on the 21st of May 2013. Of these, 1,376 were criminal cases while 233 were civil cases. The Gram Nyayalaya in Haveli on the other hand heard exclusively criminal cases. We could not find a single civil case among the cases heard or disposed by this Gram Nyayalaya for the months of March, April or May 2013. The absence of civil cases in this Gram Nyayalaya was confirmed in conversations with the Nyayadhikari as well as the Registrar of the Pune District Court.

The most extensive data set received was from the state of Madhya Pradesh for the year 2013. Again, this shows the minuscule number of civil cases heard and disposed in the Gram Nyayalayas in that State as opposed to criminal cases. On the 1st of January 2013 there were 120 civil cases pending before all eighty eight Gram Nyayalayas in Madhya Pradesh. By contrast, the similar figure for criminal cases was 12,447. Similarly, a total of 142 civil cases were filed before all Gram Nyayalayas in Madhya Pradesh during the year; the corresponding figure for criminal cases was 6,244. Finally, and rather damningly, all 88 Gram Nyayalayas in Madhya Pradesh disposed of a paltry 98 civil cases in 2013. That is little more than one case per Gram Nyayalaya. By contrast, these same institutions disposed of 6,446 criminal cases during the year.

While it is true that there are generally more civil than criminal cases pending before India's lower courts, Gram Nyayalayas still appear to hear a disproportionately higher number of criminal cases than civil. Returning to our earlier discussion, it is not surprising that none of the Gram Nyayalayas we visited had taken steps to facilitate conciliation proceedings by maintaining a panel of conciliators. The Act prescribes conciliation only in civil cases, while all three generally heard only criminal cases.

Analysis

Through the above discussion, it becomes fairly clear that Gram Nyayalayas are a substantial departure from the 'village panchayat' model embodied by Nyaya Panchayats. For all intents and purposes, they are decentralised courts, manned by sitting members of the judiciary, and deciding cases on the bases of the substantive and procedural laws of the land. This appears to especially true of criminal cases, which are heard in much the same manner as in the 'formal' court system.

On the other hand, we could not witness the manner in which these forums disposed of civil cases. It is possible that these cases are decided in a substantially different, 'village panchayat' manner. The presence of professional judges and lawyers in Gram Nyayalayas however militate against this possibility. The presence of the latter especially is likely to ensure that even civil cases in Gram Nyayalayas are heard in an adversarial manner, using the somewhat truncated procedure prescribed in the Act. At any rate, it must be remembered that Gram Nyayalayas hear a minuscule number of civil cases at the best of times.

CONCLUSION

Over 60 years after independence, the search for acceptable and accessible legal institutions for those living in rural India is still on-going. At many times, this search has been punctuated by calls to return to 'traditional' or 'indigenous' forms and mechanisms for dispute resolution. The 'village panchayat' ideal and its interpretation through Nyaya Panchayats are the most notable attempts by the Indian state to operationalise this return. The failure of those institutions was evidence of both the inaccuracy of the village panchayat idea, as well as its unviability as a guide for meaningful reform.

Gram Nyayalayas are the next major chapter in this story. Like Nyaya Panchayats, they are intended to provide persons in rural areas village level access to judicial institutions. They are however, strikingly different in both their structure and functioning. At no point do they claim to offer a particularistic, localised form of dispute resolution. For the most part, they embrace a professionalised model of justice delivery founded on the idea of adversarial adjudication. In this respect,

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they are much closer to the 'formal' courts in the country than to any indigenous or traditional institutions, real or idealised. In the broad story of the Indian legal system, the move from Nyaya Panchayats to Gram Nyayalayas likely signifies the conclusive end of State attempts to return to traditional models of dispute resolution, and the move towards a model based on the slow and steady expansion of the formal court system.