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The Gram Nyayalayas Act, 2008 moves Indian citizens with small claims, who live in rural areas, out of the adversarial system with its procedural guarantees. As a statute with limited procedural guarantees to adjudicate allegedly small claims, including those that implicate a plethora of social welfare legislations, this Act compromises the promises of the Constitution.

Equality and justice are indisputably two key facets of the idea of a modern, democratic and constitution-adhering India. The principles of equality and justice are realised by the State apparatus through the business of administration of justice. India’s justice system is characterised by systemic problems, including corruption, delays, pendency, increasing costs, limited legal aid, and a lack of appropriately trained lawyers and judges.

When confronted with the many problems of the legal system, the government’s response has been not to invest in and fix a broken system, instead it has responded by moving out of the adversarial system with its procedural guarantees, those who have the least voice and use it minimally – Indian citizens, who live in rural areas, with small claims, both civil and criminal in nature. The government does this with the passage of the Gram Nyayalayas Act, 2008 (hereinafter referred to as the Act). This Act perpetuates the phenomenon of two Indias – that of the better resourced urban citizen who can afford and has access to the courts. And, the other India of the impoverished – the more disconnected rural citizen, who gets primary access to forums that focus primarily on disposing of their claims, minus the application of essential safeguards of the legal process – lawyers, appeals, procedural protections and evidentiary requirements.

The Act provides for the establishment of nearly 5,067 gram nyayalayas or village courts across the country. The avowed objective is to provide access to justice to the citizens and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities. In his address on the eve of the National Law Day, the Chief Justice of India underscored the importance of this initiative as he asserted that this would bring the justice delivery system closer to rural citizens. Since a small number of gram nyayalayas have become operational from 2 October 2009, information on the implementation of these “village courts” is not available. Hence, we discuss the provisions of the Act and the problems associated with it.

The Gram Nyayalayas Act, 2008

This Act is not the first legislative attempt at establishing a hybrid or informal tribunal like system, 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. Galanter and Krishnan (2004: 789) document and analyse the experiences in nyaya panchayats and lok adalats (people’s tribunals). Both forums, derived according to them from, “sentimental and
symbolic support from appeal to the virtues of the indigenous system" (ibid). They note that the informalism of the lok adalat with its emphasis on compromise and speedy disposal could disadvantage weaker parties.

The lok adalats are not bound by 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 un-represented parties. The authors observe that critics of the lok adalats "see in these moves portents of a dismantling of legality in favour of paternalistic, intuitive kadi justice for the poor". They add further that

the absence of appeals, the exclusion of lawyers, and the shift of decisional standards from 'legal principles' to 'principles of justice' suggest a major enlargement of the presiding judge's discretion and robust faith that the poor have more to gain from benign paternalism than from juristic or popular legality (ibid).

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.

**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 of 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 114th report suggested the establishment of such courts in order to “provide speedy, inexpensive and substantial justice to the common man”.

Under the statute, gram nyayalayas are to be established by the state government in consultation with the high court. These are to be established for every panchayat at the intermediate level and will be headed by a nyayadhikari, who shall have the qualifications of a first class judicial magistrate. The nyayadhikari is required to periodically visit the villages under her jurisdiction and conduct proceedings in close proximity to the place where the parties normally reside, thus functioning as a mobile court.

Gram nyayalayas have both civil and criminal jurisdiction much like ordinary lower courts. It may take cognisance of an offence on a complaint or on a police report and shall try all offences specified in Part I of the First Schedule and Part II of that Schedule and also try all such offences or grant such relief under the state acts which may be notified by the state government. Section 13 lays down the civil jurisdiction of the gram nyayalayas and provides that it shall have jurisdiction to try all original suits and proceedings of a civil nature falling under the classes of disputes specified in Part I of the Second Schedule and try all claims and disputes which may be notified by the central government and by the state government.

**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.

(i) **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. Vitaly, 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.

(ii) **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 (i) provides that notwithstanding anything contained in the CPC 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 gram nyayalaya has passed a sentence only of fine not exceeding Rs 1,000. This leads up to the legally unjustifiable, Section 34 (2) that provides that no appeal shall lie from any judgment or order passed by the gram nyayalaya (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 sessions 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.

(ii) Summary Procedure and Plea Bargaining: Gram nyayalayas shall follow summary trial procedure in criminal cases. This runs contra to the CPC 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 CPC. 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 CPC, 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 filed with the court itself. Therefore, if such an application is rejected, this would in turn have an undue bearing when the trial is conducted.

(iv) ‘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”.

(v) 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 CPC 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.

(vi) Police Assistance: The Act also seeks to provide for assistance of police to the gram nyayalayas, wherein every police officer 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.

Conclusions

The government should appreciate that the aim of adjudication is not merely peace, or the maximisation of the ends of
private parties (Fiss 1984: 1073). It is to give force to constitutional values and ensure that such values infuse the content of the true aim of adjudication – justice. A statute that is created only for people residing in rural areas, with limited procedural guarantees, to adjudicate allegedly small claims – including those that implicate a litany of social welfare legislation concerning – Minimum Wages, Civil Rights, Abolishing Bonded Labour, Equal Pay and Protection from Domestic Violence compromises the promises of our Constitution. It makes a mockery of that which is most sacred to all law – that power, resources and the quantum of private gain will not determine the aims or means of the process that is adjudication. The Gram Nyayalayas Act violates this essential foundation of adjudication.

REFERENCES
Tewari, Sulabh and Tanya Agarwal (2006): Wanna Make a Deal? The Introduction of Plea Bargaining in India, Supreme Court Cases (Cri) (Jour) 2:12.