

## Understanding Efficacy of Gram Nyayalaya Model in India vis-à-vis Access to Justice

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### Introduction

The foundation of Gram Nyayalayas was first proposed by the Law Commission of India in its one hundred and fourteenth report.<sup>1</sup> In this 1986 report, the Law Commission of India described the issues ailing the Nyaya Panchayat system and proposed to create Gram Nyayalayas, literally translated to ‘village court’, at rural level. The focus was to have a participatory model of administration of justice at the grassroots away from excessive formality and rigidity of procedure as it was then applicable, and to provide a justice system to which people could relate. The previous Nyaya Panchayat model was found to be thwarted largely because of its elected composition.<sup>2</sup> Gram Nyayalaya model is a relatively new justice dispensing forum that is established at the grassroot level to provide justice to people at their doorsteps and to secure justice from any kind of social, legal or economical barrier. This new model is aimed at providing affordable and quick justice to the people especially at the village level. The right to Access to Justice and Rule of Law is a dream and an expectation of millions of Indians in rural areas. India’s commitment to equality and justice is enshrined in its democratic and constitutional framework. The State apparatus realizes the ideals of equality and fairness by administering justice.<sup>3</sup> Efforts for legal reforms have often scuffled with issue of making justice more accessible to the citizens in rural areas. In the early years, this function and responsibility was given to the Nyaya Panchayat. The Nyaya Panchayat model, however, failed to grasp the applicability of legal provisions as most of the adjudicators of Nyaya Panchayat were formally untrained in law. This model, it has been argued, represented a failed amalgamation of law in its formal sense with flexibility of village

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<sup>1</sup> Law Commission of India, *One Hundred and Fourteenth Report on Gram Nyayalaya* (Law Com No 114, 1986).

<sup>2</sup> Law Commission of India, *One Hundred and Fourteenth Report on Gram Nyayalaya* (Law Com No 114, 1986), 8-9.

<sup>3</sup> Maneka Guruswamy & Aditya Singh, *Accessing Injustice: The Gram Nyayalayas Act, 2008*, 45(43) EPW 16 (2010).

tribunals.<sup>4</sup> Due to these significant failures the panchayat-based model for dispute resolution died by the late 1970's.<sup>5</sup> A solid foundation to enable accessing justice for rural people was required to disbar the socio-economic barriers.

The Gram Nyayalayas Act 2008 (hereinafter called 'the Act') provides a model for adjudication of small claims and provide cost effective legal remedies to rural citizens.<sup>6</sup> The objective of the Act is to bring pathways to justice to citizens at their doorstep and ensuring that no one is deprived of justice on grounds of social, economic or other incapacities. The idea of Gram Nyayalaya as an institution has facets of a formal justice delivery system having foundation of adversarial adjudication of disputes.<sup>7</sup> The Act provides for the establishment of Gram Nyayalayas across the country.<sup>8</sup> Despite this assertion, only a few village courts have become operational in India. The official data shows that three hundred and five Gram Nyayalayas are operational in the country currently<sup>9</sup>, a significant improvement from last year. This number is, however, still less than the notified Gram Nyayalayas, i.e., four hundred eighty-one<sup>10</sup>, which is still significantly less than the number of village courts expected to be functional in the country. Given that a Gram Nyayalaya is to be established for every intermediate Panchayat<sup>11</sup>, the required number of village courts in the country is 6697, which is the number of intermediate Panchayats in India as of financial year 2022-23<sup>12</sup>. Recently, the Supreme Court of India, while hearing a public interest litigation, directed all States that were yet to set up village courts to issue required notifications for the same, and the ones which had issued notifications for constitution of Gram Nyayalayas, however, had not established the same or had pending appointments under the Act, to initiate the process through consultation with the High Courts on the issue of

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<sup>4</sup> Shishir Bail, *From Nyaya Panchayats to Gram Nyayalayas: The Indian State and Rural Justice*, 11(1) SOCIO-LEG. REV. 83 (2022).

<sup>5</sup> Shishir Bail, *From Nyaya Panchayats to Gram Nyayalayas: The Indian State and Rural Justice*, 11(1) SOCIO-LEG. REV. 83 (2022).

<sup>6</sup> Kamal Jeet Singh *et. al.*, *The Gram Nyayalaya Act, 2008: Key to Reviving Grassroot Justice for Common People*, 3(1) IND. JOUR. OF LAW & JUS. 1 (2012).

<sup>7</sup> Shishir Bail, *From Nyaya Panchayats to Gram Nyayalayas: The Indian State and Rural Justice*, 11(1) SOCIO-LEG. REV. 83 (2022).

<sup>8</sup> The Gram Nyayalayas Act, 2008, § 3(1), No. 4, Acts of Parliament, 2009 (India).

<sup>9</sup> Department of Justice, Ministry of Law and Justice, Government of India, *Operational Gram Nyayalaya*, [dashboard.doj.gov.in/gn/operational\\_gram\\_nyayalaya](https://dashboard.doj.gov.in/gn/operational_gram_nyayalaya) (last visited May 14, 2024).

<sup>10</sup> Department of Justice, Ministry of Law and Justice, Government of India, *Notified Gram Nyayalaya*, [https://dashboard.doj.gov.in/gn/notified\\_gram\\_nyayalaya](https://dashboard.doj.gov.in/gn/notified_gram_nyayalaya) (last visited May 14, 2024).

<sup>11</sup> The Gram Nyayalayas Act, 2008, § 3(1), No. 4, Acts of Parliament, 2009 (India).

<sup>12</sup> Ministry of Panchayati Raj, Government of India, *Annual Report 2022-23*, p. 4.

appointments of presiding officers for the Gram Nyayalayas.<sup>13</sup> Vide the same order, the Supreme Court requested Chief Justices of High Courts to advance the consultation process with respective State Governments.<sup>14</sup> Since few States are yet to file their reply in court, as of the latest order of May 14, 2024, the hearing has been postponed to post-summer vacation of the Supreme Court.

The present paper attempts to analyse the Gram Nyayalaya Model in view of India's constitutional commitment to deliver access to justice to all citizens by overcoming barriers and presenting innovative solutions. The paper presents an analysis of the model in view of the rule of law expectations that further access to justice particularly for the rural community.

### **Historical relevance of informal justice system**

Local self-government through village panchayats having jurisdiction over judicial matters was recommended by a 1915 government resolution.<sup>15</sup> The resolution adopted recommendation of the Royal Commission on Decentralisation that suggested in its 1907 report for Indian villages to retain Panchayats for better rural administration and for Panchayats to have jurisdiction over petty civil and criminal cases.<sup>16</sup> First of such kind panchayats were introduced in Madras.<sup>17</sup> Several other states followed and panchayats with slight differences in composition and jurisdiction were constituted.<sup>18</sup> The Nyaya Panchayats were given jurisdiction over civil as well as criminal matters but did not have powers of incarceration or deciding suits relating to immovable property.<sup>19</sup> Nyaya Panchayat members were in many states appointed through election and in some cases through indirect election and nomination.<sup>20</sup> The Nyaya Panchayats were not generally required to strictly comply with

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<sup>13</sup> See order dated Jan. 29, 2020 in National Federation of Societies for Fast Justice & Anr. v. Union of India WP(C) No. 1067/2019.

<sup>14</sup> PTI, SC directs states to issue notifications for establishing 'Gram Nyayalayas', FINANCIAL EXPRESS (Feb. 3, 2020, 7:40 PM), <https://www.financialexpress.com/india-news/sc-directs-states-to-issue-notification-for-establishing-gram-nyayalayas/1854657/>.

<sup>15</sup> Law Commission of India, *Fourteenth Report on Reform of the Judicial Administration* (Law Com No 14, 1958), 874.

<sup>16</sup> Law Commission of India, *Fourteenth Report on Reform of the Judicial Administration* (Law Com No 14, 1958), 874.

<sup>17</sup> Shishir Bail, *From Nyaya Panchayats to Gram Nyayalayas: The Indian State and Rural Justice*, 11(1) SOCIO-LEG. REV. 83 (2022).

<sup>18</sup> See Table 1: 'Panchayat Courts-Constitution' in Law Commission of India, *Fourteenth Report on Reform of the Judicial Administration* (Law Com No 14, 1958), 878.

<sup>19</sup> U. Baxi & M. Galanter, *Panchayat Justice: an Indian Experiment in Legal Access*, 3 ACCESS TO JUSTICE: EMERGING ISSUES AND PERSPECTIVES 343 (1979), 350.

<sup>20</sup> Shishir Bail, *From Nyaya Panchayats to Gram Nyayalayas: The Indian State and Rural Justice*, 11(1) SOCIO-LEG. REV. 83 (2022).

formal rules of procedural laws which allowed customary procedure to be employed in dispute hearing.<sup>21</sup> Even though Nyaya Panchayats depicted panchayat ideals and invoked respect, in form and substance, the 1986 Law Commission of India report believed the Nyaya Panchayat system to be problematic because they were largely comprised of elected representatives and faced prejudices at the hands of elites and the superior courts that could not be wished away.<sup>22</sup> It was observed that even though there were both disadvantages and advantages of the system of election, election of judges in the small village community, the disadvantages would overpower the advantages.<sup>23</sup>

Traditional techniques of dispute resolution like the Nyaya Panchayats and Lok Adalat have been given state legitimacy in modern-independent India. These traditional systems have however, been also criticised for arbitrariness as formal procedural requirements are not to be fulfilled.<sup>24</sup> The informal systems have developed as alternate mechanisms for dispute resolution with formal adjudication also being seen as time-consuming, costly, and sometimes inconclusive.<sup>25</sup> The Government has made considerable efforts to promote these alternative State-sponsored judicial systems as a simple but effective way for delivering justice in rural and disadvantaged areas. Access to justice issues, such as lengthy and delayed court procedures and substantial costs associated with the commencement and continuation of court cases, have successfully alienated the notion of justice from a poor man, increasing the need for these judicial systems. There is a theoretical conflict between the need to promote indigenous dispute settlement techniques in light of the issues of access to justice and the possibility that 'indigenisation' may lead to implementation and functioning issues. State-sponsored traditional dispute resolution mechanisms including Nyaya Panchayats, Lok Adalats and Gram Nyayalayas aim to mediate this conflict and bring about peace.<sup>26</sup>

Lok Adalats (or 'people's courts'), where justice is endeavoured to be delivered quickly and without much emphasis on legal jargon, have proven to be an efficient way to resolve

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<sup>21</sup> Shishir Bail, *From Nyaya Panchayats to Gram Nyayalayas: The Indian State and Rural Justice*, 11(1) SOCIO-LEG. REV. 83 (2022).

<sup>22</sup> Law Commission of India, *One Hundred and Fourteenth Report on Gram Nyayalaya* (Law Com No 114, 1986).

<sup>23</sup> Law Commission of India, *One Hundred and Fourteenth Report on Gram Nyayalaya* (Law Com No 114, 1986), 9.

<sup>24</sup> Vandana V, *The Predicament of Transitional Justice—Institutional Perspectives and The Shift Towards 'Informalisation' of Dispute Resolution in India*, CNLU LAW JOUR. 44 (2011).

<sup>25</sup> Vandana V, *The Predicament of Transitional Justice—Institutional Perspectives and The Shift Towards 'Informalisation' of Dispute Resolution in India*, CNLU LAW JOUR. 44 (2011).

<sup>26</sup> Law Commission of India, *One Hundred and Fourteenth Report on Gram Nyayalaya* (Law Com No 114, 1986).

disputes.<sup>27</sup> In the 1950s, advocates for the formal Nyaya Panchayats were keen to portray them as a natural evolution of the preceding Panchayati Raj organization. Lok Adalats are sometimes justified on same principles; though there are more dissimilarities than similarities between these two informal justice systems; by emphasizing the rich tradition and indigenous origins. In 1987, the Legal Services Authorities Act was enacted and it was further revised in 1994 and 2002. The Act formally introduced the Lok Adalat system, with emphasis on amicable dispute resolution in a system alternative to the formal courts. The Act *inter alia* envisioned a system of Lok Adalats having power to adjudicate any matter presented before a court or that could be brought before a court and for which Lok Adalat is organised. This people's court sought to include judicial officers and other qualified members<sup>28</sup>, authorized to move forward according to procedures guided by principles of justice, equity, fair play, and other legal tenets.<sup>29</sup> Instead of making a legal ruling, the Lok Adalat encourages parties to reach a compromise or settlement for which statutory conciliators are also available.<sup>30</sup> The 1994 Amendment to the Legal Services Authorities Act 1987, expects that agreed settlements would be final and binding on all parties to the dispute with no provision for appeal before a Court against the Lok Adalat award.<sup>31</sup> If no compromise or settlement can be arrived at, the matter is returned to the court. The Indian Evidence Act 1872 and the Civil Procedure Code 1908 do not apply to Lok Adalats. To this day, the Lok Adalat system continues to be used and is successful in arriving at agreed upon decisions representing a participatory role for people. According to official statistics, more than fifteen lacs Lok Adalats have been organised in India till 2015 and over eighty-two million cases court cases have been settled through this alternate dispute resolution system.<sup>32</sup> It has however, also been said that Lok Adalats have their own set of problems. The elimination of appeals, the barring of legal representation, and the substitution of principles of justice for legal principles in making rulings, point to a significant expansion of the discretion of the presiding officer and it has been argued that such discretion presumes a paternalistic approach towards disputes of the poor rather than a juristic or popular legality.<sup>33</sup>

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<sup>27</sup> G.B. Patil, *Lok Adalats in India: Issues and Perspectives*, 6 NUALS LEG. STU. JOUR. 101 (2013).

<sup>28</sup> The Legal Services Authorities Act, 1987, § 19, No. 39, Acts of Parliament, 1987 (India).

<sup>29</sup> The Legal Services Authorities Act, 1987, § 20, No. 39, Acts of Parliament, 1987 (India).

<sup>30</sup> National Legal Services Authority, *Lok Adalat*, <https://nalsa.gov.in/lok-adalat> (last visited May 13, 2024).

<sup>31</sup> Vandana V, *The Predicament of Transitional Justice—Institutional Perspectives and The Shift Towards 'Informalisation' of Dispute Resolution in India*, CNLU LAW JOUR. 44 (2011). See also The Legal Services Authorities Act, 1987, § 21(2), No. 39, Acts of Parliament, 1987 (India).

<sup>32</sup> National Legal Services Authority, *Lok Adalat*, <https://nalsa.gov.in/lok-adalat> (last visited May 13, 2024).

<sup>33</sup> Maneka Guruswamy & Aditya Singh, *Accessing Injustice: The Gram Nyayalayas Act, 2008*, 45(43) EPW 16 (2010).

The Law Commission, in order to overcome problems with the informal institutions, and with an objective of creating a participatory form of justice system, suggested to create a new forum, i.e., Gram Nyayalaya, consisting of legally trained judges as well as lay persons. Despite the Law Commission's proposition, the Indian government tried to revive the Nyaya Panchayats as dispute resolution forums in rural areas through the Nyaya Panchayats Bill, 2009. The Bill aimed to formalise Nyaya Panchayats at the village level for dispute resolution at the grassroots level. However, the Bill never became law.<sup>34</sup> The failures of the Nyaya Panchayat system clearly indicates that the demands for reviving indigenous processes of dispute resolution will prove to be fruitless. So, the government confirmed with the recommendation of the Law Commission and enacted the Gram Nyayalayas Act, 2008 on 7 January 2009. The Gram Nyayalayas Bill was passed by the Parliament on 22 December 2008 and the Act came into force from 2 October 2009.<sup>35</sup> The Act provides for the establishment of Gram Nyayalaya at intermediate panchayat level to give access to justice to citizens in rural areas at the places where they live. It provides for the creation of over five thousand village courts across the country.<sup>36</sup> The stated goals appear to be threefold: increasing efficiency in the lower courts, creating a more open and accessible forum for resolving legal disputes, and ensuring that no citizen is disadvantaged in their pursuit of justice due to socioeconomic status or other factors.<sup>37</sup> Even though Gram Nyayalayas is the most current iteration of the alleged indigenous conflict resolution forum, it may be said to reflect some of the shortcomings of the Nyaya Panchayats and Lok Adalats.

In the hierarchical scheme of courts in India, the Gram Nyayalaya serves as the state's lowest subordinate court. Under the legislation, for every panchayat at the intermediate level a Gram Nyayalaya is to be created by the State Government in consultation with the High Court<sup>38</sup>, and it is to be presided over by a judicial officer, called 'Nyayadhikari' (or judicial officer), who has the qualifications of a 'judicial magistrate of the first class'<sup>39</sup>, that is considered a

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<sup>34</sup> Christa Rautenbach & Navilla Somaru, *The Indian Approach to Criminal Justice: The Role of Traditional Courts as Alternative Dispute Resolution Mechanisms*, 53(2) COMP. & INT'L. LAW JOUR. OF SOUTH AFRICA 1 (2021).

<sup>35</sup> Department of Justice, Ministry of Law and Justice, Government of India, <https://dashboard.doj.gov.in/gn/introduction> (last visited May 13, 2024).

<sup>36</sup> Maneka Guruswamy & Aditya Singh, *Accessing Injustice: The Gram Nyayalayas Act, 2008*, 45(43) EPW 16 (2010).

<sup>37</sup> Maneka Guruswamy & Aditya Singh, *Accessing Injustice: The Gram Nyayalayas Act, 2008*, 45(43) EPW 16 (2010).

<sup>38</sup> The Gram Nyayalayas Act, 2008, § 3(1), No. 4, Acts of Parliament, 2009 (India).

<sup>39</sup> The Gram Nyayalayas Act, 2008, § 6(1), No. 4, Acts of Parliament, 2009 (India).

separate class of court in Indian criminal procedural law<sup>40</sup>. A legally trained mind as presiding officer for Gram Nyayalaya is likely to inspire more confidence in the village community, especially in terms of elimination of bias in its hearings and decisions. The recommendation of the Law Commission to include two other lay persons as part of the decision-making panel, is not reflected in the Act. The total number of pending civil cases in the subordinate courts across India is over ten million, and the total number of pending criminal cases in subordinate courts across the country is about thirty million,<sup>41</sup> bringing the total number of cases pending before lower judiciary at subordinate level to about forty million. Gram Nyayalayas can play a crucial role in reduction of this pendency once they become operational pan-India. It is hoped that this model in its functioning will showcase pros of a formal court system and participation of common public in the administration of justice.<sup>42</sup>

### **Challenges with the Gram Nyayalaya model**

The Law Commission in its one hundred fourteenth report on Gram Nyayalaya<sup>43</sup> questioned the legal basis of Panchayat System in India because it lies outside formal dispute legislation agency, *i.e.*, Courts in India are provided by the Constitution of India. In a discussion regarding governance and challenges facing Gram Nyayalayas in India, telecast on Rajya Sabha Television in 2020 with retired government officials, journalist and retired High Court judge as panellists, four challenges regarding the functioning of the Gram Nyayalaya were identified.<sup>44</sup> One, infrastructural challenges like appointment of Nyayadhikaris and as well as sectorial staff, and logistical support like transport facilities and vehicles, internet connectivity, salaries of support staff, and other arrangements as required to carry on the work of Gram Nyayalayas. Infrastructural challenges also include availability of notaries, stamp vendors, and filing system in at least a nascent form.

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<sup>40</sup> The Code of Criminal Procedure, 1973, § 6, No. 2, Acts of Parliament, 1974 (India) and the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, § 6 (India).

<sup>41</sup> Jelsyna Chacko, *Touching 5 crore: What pendency of cases in India looks like*, BAR AND BENCH (Dec. 21, 2021, 6:43 PM), <https://www.barandbench.com/columns/debriefed-touching-5-crores-thats-what-the-pendency-of-cases-looks-like-in-india-statistics>.

<sup>42</sup> Usha Vaidyanathan, *Salient Features of Law Commission of India 114th Report on Gram Nyayalaya*, 2 SCC J-25 (1987).

<sup>43</sup> Law Commission of India, *One Hundred and Fourteenth Report on Gram Nyayalaya* (Law Com No 114, 1986).

<sup>44</sup> Sansad TV (previously Rajya Sabha TV), *Desh Deshantar: Gram Nyayalaya: Governance & Challenges*, (2020) [https://www.youtube.com/watch?v=2o\\_8BuJodY&t=476s](https://www.youtube.com/watch?v=2o_8BuJodY&t=476s) (last visited May 10, 2024). ‘Sansad’ means Parliament.

Two, the extension of Public Prosecution system to these Gram Nyayalayas. This challenge can be characterised as an access to justice challenge hitting upon lack of procedural fairness in case Public Prosecutors are not introduced within the Gram Nyayalaya framework. It is pertinent to note here that Gram Nyayalayas Act provides for appointment of Public Prosecutor for the conduct of criminal cases. The Act also acknowledges and in fact extends the provision of legal aid services for matters before it. The discussion on the programme however, also identified the will of the advocates to appear before the village courts mostly due to the fact of these courts being far off from the city and do not provide for opportunities to practise as per strict procedure laid down in law. Fairness as a procedural goal is intrinsic to the concept of equality of opportunity and equality as Rule of Law is guaranteed through Part III of the Constitution of India.<sup>45</sup> Thus, the absence of adequate representation in both civil and criminal matters before the Gram Nyayalaya coupled with the scarcity of Public Prosecutors for conduct of cases before village courts, brings us to question the role of Nyayadhikari as well as scepticism about the fulfilment of objectives of quick and non-formal dispute resolution within the Gram Nyayalaya model. Another associated challenge with extension of the Public Prosecutor system to the Gram Nyayalayas, is that the either the existing prosecutors shall be given additional responsibilities as a stop-gap or temporary arrangement, or new advocates will be appointed as Public Prosecutors in the Gram Nyayalaya framework. If the idea is to provide an informal or in fact, a semi-formal dispute resolution for petty issues to the residents of villages in India in a speedy and low-cost fashion, the introduction of Public Prosecutor system within the Gram Nyayalaya framework sounds absurd. Not only will this increase cost and put additional pressure on the system, it will also make the procedure cumbersome and access to justice may remain an elusive idea for Indian villages. Yet it seems evident from the Rajya Sabha TV discussion that the absence of the Public Prosecutor system of Gram Nyayalaya is posing a challenge in the establishment and continuation of Gram Nyayalaya. A suggestion made during the discussion was to make handling of a minimum number of cases in rural courts a mandate for new entrants to the legal profession. An allied concern with the making of advocates and Public Prosecutors available and attached for Gram Nyayalayas cases, is of local language. The Nyayadhikari as well the advocates will require additional training in the local language spoken in the village so as to forge a connect with the residents and smoothen their access to this judicial system. The Act provides for proceedings of the Gram Nyayalaya to be executed

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<sup>45</sup> Maneka Gandhi v. Union of India (1978) 1 SCC 248.



and recorded in the official language of the State instead of English.<sup>46</sup> This would require Nyayadhikari and the assisting staff to be well versed in the official language of the state.

The third challenge under the discussion was presented as the lack of awareness amongst people regarding the 2008 law and the alleged procedure, especially the provision of 'Mobile Court' under the Act which will be empowering the citizen in their backyard. The fourth challenge under the discussion was lack of strong political will for the effective functioning of Gram Nyayalaya, strong political will and enthusiasm is required which is clearly missing in the establishment of Gram Nyayalayas. Additionally, the panel also highlighted some positive aspects of the doorstep justice model, such as, quick justice and inexpensive proceedings relevant especially for the poor in rural India.

### **Theoretical foundation for efficacy of Gram Nyayalaya model**

The establishment of Gram Nyayalaya to equip rural citizens with access to justice at their doorstep is an extension of the obligation contained in Article 39A of the Indian Constitution that requires the State to 'ensure that the operation of the legal system promotes justice on a basis of equal opportunity and that opportunities for securing justice are not denied to any citizen due to economic or other infirmities'. Even before the one hundred fourteenth report of the Law Commission on Gram Nyayalaya, efforts were made to introduce the alternative dispute resolution mechanisms like mediation and conciliation. However, the same were not found sufficient for providing justice to the rural masses.<sup>47</sup> This was the watershed moment leading to the enactment of The Gram Nyayalayas Act, 2008.<sup>48</sup> Kaur argues that the major objective towards establishment of this forum is to address pending cases in the subordinate courts and introduce the concept of participatory justice. The rationale behind the Act and its objective is reflected from the preamble. The Act aims to ensure that no vulnerable section of the society owing to social, economic or other disabilities is denied the opportunity to secure justice.

The 2030 Agenda of the United Nations adopted the Sustainable Development Goals in 2015 laying down goals and targets for all people to enjoy peace and prosperity. Particularly, Goal 16 requires nations to promote peace, justice and strong institutions, and is relevant to understand efficacy of the Gram Nyayalaya model. Goal 16 aims at promoting the rule of

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<sup>46</sup> The Gram Nyayalayas Act, 2008, § 29, No. 4, Acts of Parliament, 2009 (India).

<sup>47</sup> Harleen Kaur, *The Gram Nyayalaya Act, 2008 - Accessibility to Justice for All*, 1 JCLC 126, 133 (2013).

<sup>48</sup> Harleen Kaur, *The Gram Nyayalaya Act, 2008 - Accessibility to Justice for All*, 1 JCLC 126, 128 (2013).

law, ensuring equal access to justice for all<sup>49</sup>, and further responsive, inclusive, participatory and representative decision-making at all levels. The institution of Gram Nyayalaya does in fact reflect a participatory form of judicial administration.

The Preamble to the Indian Constitution aims for safeguarding justice, liberty, equality and fraternity for all citizens. The governance principles enshrined in Directive Principles of State Policy call for providing access to justice to all citizens, especially the vulnerable sections of the society.<sup>50</sup> As a principle of rule of law, access to justice can be said to be a human right. It has been argued that access to justice is a human right because it is fundamental and universal 'human existence and enables people to live with dignity'.<sup>51</sup> Pendency of cases in courts for a long time, lack of an adequate number of appointed judges, formality of procedure along with delay from the side of parties to the dispute, tedious application of rules of evidence in technical terminology, cost entailed in conducting cases including availing the services of lawyers, are some of the factors contributing to limiting the access to justice for common people. The Gram Nyayalayas Act 2008 is a new revolution for India; however, with the delay in establishment of Gram Nyayalayas it appears that one still needs to sit patiently with optimism for their setting up and proper functioning.

Justice, as a Rawlsian concept, is understood as fairness as well as the implicit acceptance of principles of equality. It induces ideas of the rule of law, dispute settlement, and institutions that develop laws and those that enforce them. The fundamental principle enshrined in the Preamble to the Indian Constitution is 'justice: social, economic, and political'.<sup>52</sup> Access to justice is widely recognized as crucial to human development, critical for guaranteeing democratic government, eliminating poverty, promoting human rights and conflict resolution amongst the poor. There is no concrete definition of 'access to justice', the broader concept of it means access to lawyers and legal institutions. Through their seminal work, Cappelletti and Garth, say that access to justice can be seen as a test for the legal system vide which citizens assert their rights, i.e., to see if the system is equally accessible to all, and that it directs towards results that are 'individually and socially just'.<sup>53</sup> Access to justice is also a set of associated capabilities and reformatory and inclusive practices should be incorporated to

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<sup>49</sup> U.N. GAOR, Sustainable Development Goal 16: Peace, Justice and Strong Institutions, U.N. Doc. A/RES/70/1 (Oct. 21, 2015).

<sup>50</sup> See INDIA CONST. art. 39A.

<sup>51</sup> Promit Chatterjee & Sreerupa Chowdhury, *A Capabilities Approach to Access to Justice*, 4 JOUR. OF IND. LAW & SOC. 107 (2013).

<sup>52</sup> See INDIA CONST. preamble.

<sup>53</sup> Mauro Cappelletti and Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 BUFF. L. REV. 181 (1978).

provide rights beyond mere legal representation in criminal trials.<sup>54</sup> The constitution bench of the Indian Supreme Court observed access to justice to be basic human right and recognized four of its facets to be necessary, namely, i) State providing an effective adjudicatory mechanism<sup>55</sup>, ii) such mechanism to be accessible in terms of distance conveniently<sup>56</sup>, iii) a speedy process of adjudication<sup>57</sup>, and iv) an affordable process of adjudication.<sup>58</sup>

Public trust in the established legal system is gained by the depiction of fairness in the process employed by the authorities functioning under the system. Tyler and Huo in their process-based model of regulation presented a two-fold concern for effective regulation.<sup>59</sup> The first was the ability of the legal authority especially the courts and the police *i.e.*, two most pertained functionaries in the justice system, to gain compliance, immediate as well as long term from the member of the Public in particular issues, where the intervention of these authorities are called for.<sup>60</sup> The second concern was the capacity of the legal system to ensure overall compliance with the law and cooperation with law enforcement agency.<sup>61</sup> In the process-based model, it is argued that compliance of law by people is greatly influenced by their subjective judgement of the procedure of fairness on which the police and the courts, *i.e.*, the two most prominent authorities involved in the implementation of the law, rely and are expected to follow in ensuring that the public behaves in a law conforming manner. Fairness in legal procedure is said to be the most influential factor in people's decision of consenting and cooperating with police officers and judges. Tyler argues that legal authorities will incur less resistance in obedience if they feel they are being treated fairly.<sup>62</sup> When seen in the light of understanding efficacy of Gram Nyayalayas, the public perception of justice achieved through the processes of Gram Nyayalaya shall play a relevant role. No justice delivery system can function effectively unless it can ensure that its decisions are complied with. Though the Gram Nyayalayas Act does give the Nyayadhikari powers to execute its orders and the necessary institutional support is also imagined in the Act. However, the system developed as an alternative to indigenous dispute resolution and with the objective of facilitating a greater access to justice, cannot be averse to the perception of the common folk

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<sup>54</sup> *Ibid.*

<sup>55</sup> Anita Kushwaha v. Pushap Sadan (2016) 8 SCC 509, 530.

<sup>56</sup> Anita Kushwaha v. Pushap Sadan (2016) 8 SCC 509, 531.

<sup>57</sup> Anita Kushwaha v. Pushap Sadan (2016) 8 SCC 509, 531.

<sup>58</sup> Anita Kushwaha v. Pushap Sadan (2016) 8 SCC 509, 532.

<sup>59</sup> TOM R TYLER & YUEN J HUO, TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS 175 (Russell-Sage 2002).

<sup>60</sup> *Ibid.*

<sup>61</sup> Tom R Tyler, *Procedural Justice, Legitimacy and Effective Rule of Law*, 30 CRIM. & JUS. 283, 284 (2003).

<sup>62</sup> *Ibid.*

that can lead to its acceptability amongst the masses. This will also ensure sustenance of this model of Gram Nyayalaya which is unique to India. As a caution, here, we should also not forget the legitimacy derived by the model and institution of Gram Nyayalaya from the statute creating them. Thus, public trust can be goal for this institution, however, it cannot be the sole dominant goal in the path to justice. Another aspect on which Gram Nyayalaya model can be judged on their efficacy, that is, apart from people's satisfaction with it and the procedure employed by it, is its predictability. This would mean that decisions will be expected by people in like situations or disputes to be similar to the previous ones.

According to the UNDP practice note on access to justice,<sup>63</sup> development of systems of adjudication and enforcement of decisions are important aspects of building capacities for access to justice. The reforms should follow an integrated approach involving protection of rights and improvement of institutional capacities.<sup>64</sup> The institution of Gram Nyayalaya is required to focus on adjudication while keeping in mind principles of due process and fairness and the same is extensively seen through the statutory procedure provided for the Nyayadhikari to follow. Therefore, it would be proper to say that that Gram Nyayalaya as an institution advances access to justice.

### **Gram Nyayalaya tested on rule of law expectations**

The Gram Nyayalayas system as evident from its provisions, reflects that the system is distancing itself from indigenous practices and purely informal procedures. A legal system that strives for rule of law, as understood in its reflection within Article 14 of the Indian Constitution, the establishment of a dispute resolution mechanism at the rural level is expected to define itself as a formal or informal system. The Gram Nyayalaya statute incorporates doctrines and principles of the common law system, for example, principle of *nemo iudex in causa sua*, i.e., that no one can be a judge in their own cause; the principle of *audi alteram partem*, requiring the presiding officer to hear both sides of the dispute before deciding the matter; categorization of cases for defined jurisdiction; and adherence to trial procedure for adjudication. These principles are as such derived from the formally developed legal regime of established legal procedures for adjudication. Here, the legal procedure being referred to are the pan-India legislations, i.e., the Code of Criminal Procedure 1973, the Civil Procedure Code 1908, and the Indian Evidence Act 1872. Though the Nyayadhikari under the

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<sup>63</sup> UN Development Programme, *Access to Justice* (2004).

<sup>64</sup> *Ibid.*

Gram Nyayalayas Act is judicial magistrate of the first class, yet, the Nyayadhikari has discretionary powers throughout the conduct of the case before it. This is especially evident in section 19 of the Act, where the Nyayadhikari has been given the power to decide which procedure shall apply to peculiar cases. The discretionary powers of Nyayadhikari are reflected in civil disputes<sup>65</sup> on a greater degree. Here, the Nyayadhikari adopts procedure which is just and reasonable in the interest of justice on all incidental matters. Further, the Gram Nyayalaya can also dispense with formal recording of evidence in civil disputes if it deems it fit. Formal and informal legal systems may be differentiated and compared on factors like the system of law followed; i.e., common or civil law or advise of council elders, sources of law, who are considered the decision-makers, the geographic reach of the system, objective of the system; i.e., whether focus is on resolution of immediate disputes or restoration of relationships, and whether there exists a demarcation between disputes as civil cases or criminal cases.<sup>66</sup> Even though the Gram Nyayalaya model is meant to work in rural areas and the Nyayadhikari has within its jurisdiction disputes involving individual and collective rights, the differing civil and criminal procedures to be followed depending upon the nature of the dispute lends formality to the system. The formality in the Gram Nyayalaya system is also evident from its limited subject-matter jurisdiction provided in the schedules.<sup>67</sup> Even though the formality is evident in the procedures adopted under the Act, the provisions lending discretion to the Nyayadhikari allowing the decisions to be made which are deemed just and reasonable in their opinion, introduce informality also because of the focus on objectives to be achieved through the Gram Nyayalaya model. With the Gram Nyayalaya incorporating these two differing approaches within the same model, it cannot be said to singularly formal or informal.<sup>68</sup> Therefore, the question is whether the mixed approach of decision-making under the Gram Nyayalaya model advances rule of law.

KK Venugopal in his 2000 piece<sup>69</sup> has spoken about barriers to access to justice including unfamiliarity with the court processes and functioning of the legal and judicial system. According to him, the preference of village residents in alternative or non-formal adjudication system has also been seen as a barrier to access to justice in the Indian

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<sup>65</sup> The Gram Nyayalayas Act, 2008, § 24, No. 4, Acts of Parliament, 2009 (India).

<sup>66</sup> JAMES DOBBINS *et. al.*, *Rule of Law* in THE BEGINNER'S GUIDE TO NATION-BUILDING 82 (RAND Corporation 2007).

<sup>67</sup> The Gram Nyayalayas Act, 2008, § 11, 12, 13, No. 4, Acts of Parliament, 2009 (India).

<sup>68</sup> Dobbins, *supra* note 57, at 75.

<sup>69</sup> K.K. Venugopal, *Access to Justice: The Indian Experience*, 57 GUILD PRAC. 195 (2000).

experience.<sup>70</sup> With the Gram Nyayalaya setup being brought to life, it may be said that this barrier will to a good extent be eliminated especially with the execution of mobile courts by Nyayadhikari. Geographical distance of High Courts from the villages has also been seen as logistical barrier for a country as vast as India making justice inaccessible for many people.<sup>71</sup> Therefore, it can be said that the village courts model advances access to justice by bridging the geographic gap between the people and judicial institutions. Although the Gram Nyayalaya as an institution is relatively new in its establishment and functioning, it is step in right direction for the development of capabilities to increase access to justice.

Our analysis reveals that the Gram Nyayalaya model is more of a formal system with nuances of informality seen in few of the procedural aspects largely depending upon the statutory discretion guided by the principles of justice and fairness. It cannot per se be called an informal system. For the Gram Nyayalaya institution to advance access to justice and consequently rule of law, the discretionary principles for Nyayadhikari need to be well defined instead of a hefty reliance on the adjudicator's individual sense of justice and fairness. The categories of cases defined in the first and second schedules to the Act, inform that the Nyayadhikari shall be expected to adjudicate diverse disputes, making the need of defined governing principles more relevant. The Gram Nyayalaya system also expects the adjudicator to be inclusive and participatory in approach, thus, presenting a need of balancing adjudicatory principles with participation of litigants.

Gram Nyayalaya is a significant reform in the Indian Judicial system, it appears to be an amalgamation of the intentions of several special courts, in incongruity to regular adversarial trials.<sup>72</sup> With the evolution of the socio-economic-political environment, India has adapted to a justice delivery system accordingly. Thus, Gram Nyayalaya model, if implemented in a manner that utilizes its full potential will tremendously aid in transforming 'institutions of law' into 'institutions of justice'.<sup>73</sup>

## Conclusion

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<sup>70</sup> *Ibid.*

<sup>71</sup> V.R. Krishna Iyer, *The Judicial System—has it a Functional Future in our Constitutional Order?*, 3 SCC J-1 (1979).

<sup>72</sup> S. Latha & R Thilagaraj, *Restorative Justice in India*, 8(4) ASIAN JOUR. OF CRIM'Y. 309 (2013).

<sup>73</sup> Ashwini Obulesh, *Institutionalising Justice: Gram Nyayalayas and Consumer Courts in THE STATE OF THE INDIAN JUDICIARY: A REPORT* (DAKSH, 2016).

The Gram Nyayalaya Model furthers the capabilities approach propounded and advocated by Sen,<sup>74</sup> whereby the opportunity to get a dispute resolved at one's doorstep has abridged the gap the residents of villages face in accessing justice. The model can be said to be presenting an equality of opportunity by reducing the distance between the people and the justice providing institutions which can be said to promote access to justice.<sup>75</sup> The Gram Nyayalaya Model is sound on paper; however, the efficacy of this model needs to be judged in light of the problems it encounters and attempts to overcome. The unique objective of doorstep justice, like infrastructural hurdles alongside issue of unwilling participants, and on its proper implementation, and further on the development of fair principles that will continue to govern the Nyayalayas in the long-run, cannot be ignored in judging this model. The official data on the number of cases handled by the operational Gram Nyayalayas is a substantial number<sup>76</sup> and it depicts that the public has begun to trust this model. In a welfare state like India where access to justice can play a dual role of being a right as well as a governance goal, it needs to be seen whether the Gram Nyayalaya model stands the test of time in providing justice to the people. We may be optimistic in this institution's functioning and hope for it to increase a participatory form of justice and reduce the pendency of cases. However, we must also not overlook the fact that even if all of the envisioned Gram Nyayalayas begin operating today, there will still be a long way to complete hearing and disposal of backlog of cases pending before the judiciary.<sup>77</sup> It is important to understand that the efficiency of this model should not be tested only in terms of number of courts and number of disposed cases, and rather needs to be seen in light of its unique objectives and evolutionary roots. The model provides direct and quicker access for the poor and the rural communities and intrinsically promotes peace and justice.

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<sup>74</sup> See generally, Sen's concept of capabilities approach, AMARTYA SEN, *INEQUALITY REEXAMINED* (Russell Sage Foundation 1995).

<sup>75</sup> See Marjorie Mayo *et. al.*, *Concepts of Justice and Access to Justice* in *ACCESS TO JUSTICE FOR DISADVANTAGED COMMUNITIES* (Bristol University Press 2014) 2.

<sup>76</sup> Department of Justice, Ministry of Law and Justice, Government of India, *Gram Nyayalaya Pending Cases* (2024), [https://dashboard.doj.gov.in/gn/pendency\\_civil](https://dashboard.doj.gov.in/gn/pendency_civil) and [https://dashboard.doj.gov.in/gn/pendency\\_criminal](https://dashboard.doj.gov.in/gn/pendency_criminal) (last visited May 13, 2024).

<sup>77</sup> Harleen Kaur, *The Gram Nyayalaya Act, 2008 - Accessibility to Justice for All*, 1 JCLC 126, 134 (2013).