
IMPLEMENTATION OF THE GRAM NYAYALAYAS ACT IN THE STATE OF ODISHA: AN ASSESSMENT

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ABSTRACT

The Gram Nyayalaya Act, 2008 is another attempt of legal reform in India. Access to justice has always been a constant struggle for rural litigants. In order to grapple this issue, the parliament intended to setting up of 5,000 Gram Nyayalaya in the country. Odisha, ranking 8th in area has a huge population living within the ambit of rural areas. The state has 22 Gram Nyayalayas notified, but only 16 are established so far. This article analyses the implementation of the Gram Nyayalaya Act in the state of Odisha by a comparative analysis of the provisions of the Act and the practical application in Gram Nyayalaya, Tangi and Gram Nyayalaya, Kendrapada of the state. This analysis reveals that the Gram Nyayalaya in the state poorly comply with the mandates of the act, and though it's a step in the right direction, it still has a long way to go in achieving rural justice.

I. INTRODUCTION

In a widespread country like India where majority of the population comes from a rural background, it is a grueling task to make the justice system expansive enough for inclusion of the countryside litigants. In various constitutional assembly debates, several proponents, in particular Mahatma Gandhi, were of the opinion of having a judiciary in traditional fashion.

The Law Commission, in the year 1986, in the reports of its 114th Report, proposed the establishment of Gram Nyayalaya or village courts for providing speedy justice by a cost effective mechanism to the people in the rural areas.

In 2008, the parliament passed The Gram Nyayalaya Act, 2008 to provide justice to all citizens residing in village area of India at the doorsteps. Gram Nyayalaya are mobile village courts in India established under Gram Nyayalaya Act, 2008 for speedy and easy access to justice system in the rural areas of India. They are aimed at providing inexpensive justice to people in rural areas. The Act came into force on October 2, 2009 i.e. the birth anniversary of Mahatma Gandhi.

Gram Nyayalaya carries powers of civil as well as of criminal courts. They are supposed to settle the disputes by following conciliation as far as it is practicable. The judgments given by a Gram Nyayalaya qualify as a decree and the Gram Nyayalaya are supposed to follow a summary procedure in conducting the proceedings.

(A) Research Objective

- To study the implementation of the Gram Nyayalaya Act, 2008 in the Gram Nyayalaya Tangi and Kendrapada, situated in different districts of the state of Odisha.
- To analyze the extent upto which the purpose of the Gram Nyayalaya Act, 2008 is being fulfilled for providing for access to justice at the doorstep.
- To accentuate the loopholes in the implementation if any and recommend suggestions for successful implementation of the same.

(B) Scope of the study

Gram Nyayalaya, Tangi and Gram Nyayalaya, Kendrapada are selected for the imperative study.

(C) Research Methodology

The study is based on mixed method procedures applying empirical and doctrinal methodology. It involves the collection of both qualitative and quantitative data. Doctrinal methodology is applied to study the Gram Nyayalaya Act, 2008.

(D) Research Questions

Q1- Whether the provisions of the Gram Nyayalaya Act, 2008 are being complied with by the Gram Nyayalayas?

Q2- What is the response of the litigants towards the services provided by the Gram Nyayalaya?

II. THE GRAM NYAYALAYA ACT, 2008

The Gram Nyayalaya Act, enacted in 2008 by the parliament of India, came into effect in 2009.¹ The chief aim of the Act is to make access to justice easily and inexpensively assessable to the rural population by establishment of Gram Nyayalaya at the grass root levels.²

The Gram Nyayalaya Act, 2008 contains 40 sections, divided into VIII chapters and 2 schedules, divided into III Parts each. The entire country is governed by it, including the states of Nagaland, Arunachal Pradesh, Sikkim and tribal areas.³

Every Gram Nyayalaya is the court of a Judicial Magistrate First Class and the Nyayadhikari who acts as its presiding officer is appointed by the state government in consultation with the High Court of that state. He/She is entitled to the same salary and has same powers as any of the first class magistrates who work under the high court.

The Act provides for establishment of a Gram Nyayalaya for every panchayat at intermediate lever or for a group of contiguous panchayats at intermediate level in a district.⁴ These Gram Nyayalayas are endorsed with powers of both Criminal and Civil Courts.⁵ The Gram Nyayalaya try the Criminal cases and Civil suits which are specifically contained in the First and the

¹ The Gram Nyayalaya Act, 2008, Act No.4 of (2009).

² The Gram Nyayalaya Act, 2008, Preamble, Act No.4 of (2009).

³ The Gram Nyayalaya Act, 2008, S1 (2), Act No.4 of (2009).

⁴ The Gram Nyayalaya Act, 2008, S3, Act No.4 of (2009).

⁵ The Gram Nyayalaya Act, 2008, S11, Act No.4 of (2009).

second schedule of the Act. The First and the Second Schedules can be amended by both the Central as well as the State government.⁶

The Jurisdiction of the gram Nyayalaya is as follows:

(A) Civil Jurisdiction- The civil jurisdiction of the Gram Nyayalaya extends up to trying all the suits mentioned under part I of the Second Schedule of the Act. It also further extends to trying all the claims which are notified by the state government mentioned under part II and Part III of the Second Schedule, of the Act and the claims and disputes falling under the center and state statutes, whenever notified.

(B) Criminal Jurisdiction- The criminal jurisdiction of the Gram Nyayalaya extends upto trying all the offences which are mentioned in part I of the First Schedule. They are the ones which are not punishable with death, imprisonment of life or imprisonment for a term which is more than two years. It can also try the offences which are mentioned in Part II of the First Schedule.

The Gram Nyayalayas are not bound by Rule of Evidence provided as under the “Indian Evidence Act, 1872” and are guided by the principles of Natural Justice which is subject to the Rules and Regulations made by the high court in that regard.

The appeal from a Gram Nyayalaya, in criminal cases lies to a court of session, where it is supposed to be heard and disposed off within a time span of six months from the date of filing such appeal. The appeal in civil cases lies to the District court, where it is heard and disposed off within a time span of six months from the date of filing the appeal.

III. TANGI, GRAM NYAYALAYA (ODISHA) INDIA 2 APRIL 2019

(A) Geographical location and establishment

Gram Nyayalaya, Tangi is situated in the interior of district Khordha, Odisha. Tangi is a town in Khordha district. It comprises of a tehsil Tangi is around 65 km from Bhubaneswar, which is the capital of Odisha.

The building is rusty with little amenities. Considering the turnout of litigants, the establishment lacks a proper waiting area. The constructed area is less and a large stretch of

⁶ The Gram Nyayalayas Act, 2008, S14, Act No.4 of (2009).

land within the premises is left unused.

Tangi Gram Nyayalaya was established in October, 2013 by the Odisha State government. The Gram Nyayalaya has 26 panchayats and around 2000 villages under its territorial jurisdiction.

(B) Highlights of interaction with the key officials and litigants

The functioning of any organization can be deeply understood by analyzing the population under consideration along with their experiences known as facts with the given theory of rules and regulations being applied on the given population. Applying the same principle, following facts was derived from the survey:

The institution of cases on yearly basis ranged from 400 – 500 with a pendency of around 3000 cases. The pendency pertained as the result of reckless behavior of the litigants. There are instances when the Nyayadhikari has to issue warrant to procure the presence of the litigants as they do not respond even after repetitive attempts of serving the summons.

Multitasking of different roles has become a required practice by the Nyayadhikari and Advocates as the district court failed to appoint conciliators. The officials are bound to function as conciliators as and when the situation requires. The provision of Plea Bargaining is also of no compliance in the mode of operation of the Gram Nyayalaya.

The Judicial Magistrate First Class/ Nyayadhikari enjoy discretionary power in deciding whether the cognizance of a particular case is to be taken up in the capacity of Judicial Magistrate First Class or as Nyayadhikari.

The nature of cases instituted vary from criminal cases of Assault, domestic violence and cruelty by husband or relatives of husband (S.489-A, I.P.C).As a general practice of the area these cases are registered as complaint cases⁷ since the police usually refuses to file the First Information Report.

A large area of the district is remote and not well connected by transportation. Mobile courts are organized at the locations other than the actual allocated court office. They work in remote areas and locations where there is lack of availability of judicial services. The litigants find it

⁷ Code of Criminal Procedure, S200 R/W S156(3)

easily approachable hence they do not hesitate in responding to the summons thereby making the idea of mobile court proceedings a success.

IV. CAMP COURT, RAJNAGAR GRAM NYAYALAYA(ODISHA) INDIA 23 APRIL 2019

(A) Geographical location and establishment

The Camp Court is situated at the Gram Panchayat Office, Jalachua, Rajnagar. The Rajnagar city is situated at the coast of Bay of Bengal, in District Kendrapada. The camp court is centrally located and easily accessible as compared to the Gram Nyayalaya which is situated at a distance of around 50 km from the camp court. The camp courts is situated in a natural setting which leads into large premise includes a building where the camp court is conducted, land comprising trees forming canopies and a pond .*The Rajnagar Gram Nyayalaya was established in November 2011 by the State Government of Odisha and 29 panchayats fall within its jurisdiction.*

(B) Highlights of interaction with the key officials and litigants

The camp court proceedings are conducted in the local language since its known to a majority of population. The chief officials present at the proceedings are the Nayayaadhikari, who presides over the proceeding, public prosecutor, and police officers. The Mobile Court/Camp Court is conducted 4-5 times in a year. The total number of criminal cases instituted summed up to maximum 1000 from which around 800 were already disposed off.

Most of the litigants are illiterate hence unaware of their rights. They do not possess much knowledge of the legal procedures and they do whatever they are told. They face a difficult situation at the institution of F.I.R as a result of few malpractices deteriorating the judicial system. They complain about the pendency in the disposal of cases. Judicial process scares many of them at the primary level when they are mistreated by the police and hence the same insecurity is reflected at the time of conducting of trials, as they want to avoid interaction with officials due to their shaken faith in the legal system thus they want their cases to be disposed off at the earliest.

V. FINDINGS OF THE SURVEY:

- **Ineffective Enforcement Of The Act-** Odisha, covering a total area of around 155,707 square km divided into 30 districts and only 16 Gram Nyayalaya⁸ are operational in the State which is contrary to the number of notified Gram Nyayalayas being 22. The proposal of Odisha High Court to the State Law Department suggested the establishment of 30 Gram Nyayalayas in different districts.
- **High Rate Of Pendency** – As observed at the field visits, there is a high rate of pendency at both of the Gram Nyayalayas. One of the objectives of the Act is to lower the number of pendency and burden of the lower courts but the number of cases which are disposed off timely by the Gram Nyayalayas is almost negligible. They are established to give fast track justice by following summary procedure which is specifically provided for under section 19 of the Act, to the rural population at but it appears to be failing the purpose.
- **Non Assessment Of Gram Nyayalaya At Regular Basis-** There is no regular assessment of the Gram Nyayalayas by the higher officials and hence there is no check on the arbitrary working of these institutions of justice.
- **Establishments At Remote Locations** - The purpose of the legislation required that the Gram Nyayalayas to be established at the areas where it becomes of maximum utility of the villagers but the Gram Nyayalayas are situated at remote locations and it is very difficult to access them whenever required. There is lack of transportation facility to these remote locations. The roads are in a deteriorating condition.
- **Ambiguity Regarding Jurisdiction-** There is a lot of ambiguity and confusion regarding the specific jurisdictions which the Gram Nyayalayas possess. There are so many villages under a single Gram Nyayalaya which creates confusion for the litigants, whether their village falls under the Gram Nyayalaya jurisdiction or not. No measures are taken to assure the required information is easily available to the public at large.
- **Absence Of A Separate Cadre For Nyayadhikari-** There is no separate cadre for the Nyayadhikari and the JMFC performs the functions of Nyayadhikari, despite of being over burdened by the work as a JMFC. They do not possess a special training required for such a position as there is no legal provision for the same.

⁸ Information derived from the Nyayadhikari of Gram Nyayalaya, Tangi.

VI. SUGGESTIONS:

- **Under The Civil Jurisdiction, the Limit On Pecuniary Jurisdiction Should Be Increased-** The current pecuniary limit of the Gram Nyayalaya is Rs. 10,000. Generally the civil disputes of the twenty first century are relating to a subject matter which is of a higher pecuniary value hence it becomes a matter of concern to increase the set limit.
- **Conciliators Should Be Appointed For Better Results-** Conciliators have a specific role to play owing to their specialized qualifications and experience, their appointment is made mandatory by the act, as S.27 of the act reads “The district court shall.” Hence, the job of the conciliators should not be performed by the police, Advocates or Nyayadhikaries.
- **Appointing More Than One Nyayadhikari In Areas Of Larger Territorial Jurisdiction-** Keeping in view the backlog of pending cases and the large territorial jurisdictions of the Gram Nyayalaya, more than one presiding officers must be appointed to ensure the smooth functioning of the Act. Since the Act, has endorsed both civil and criminal jurisdiction to the Gram Nyayalaya and at instances it is also deemed to be a court of judicial magistrate first class, it should also have more working officials similar in manner of the courts.
- **Role Of JMFC Should Be Separated From Role Of Nyayadhikari-** One person should not perform two different functions at different levels. Nyayadhikari should be appointed exclusively for Gram Nyayalaya and they should not function as JMFC at that time. In order, not to compromise on the quality of work, the dual burden upon the Nyayadhikari should be removed and their role should be kept without adulteration.
- **Mobile Courts Should Accept The Registering Of Complaint Cases-** Since law is made for providing justice, it should not be denied anywhere. The Act should serve maximum benefit to the people. Since there are a large number of complaint cases, the Mobile Courts should be open for filing of complaints so that the inability of litigants to access the Gram Nyayalaya does not result in a disability to attain justice.
- **Nyayadhikari Should Be Provided Training Before Appointment** – Dealing with a specific set of population requires specialized training. Since the Nyayadhikari are chosen from amongst the JMFC’s, they should be provided training, prior to appointment as a Nyayadhikari. If not an exclusive training, there should be special sessions dealing with the Gram Nyayalaya Act, in the general training of Judicial Officers.

- **Awareness Programs Must Be Conducted For The Litigants About Conciliation Process**– Most of the litigants seemed unaware of the conciliation process. They just abide by the advocate or Nyayadhikarie's advice because they believe them to be wiser. Many of them do not understand the meaning of conciliation and hence are unaware of its benefits.
- **Plea Bargaining Should Be Practiced** – The Act provides for provision of plea bargaining under section 20 but in practice it is not complied with. The provisions of the Act are made for the benefit of the litigants but if they are not being used and the purpose of the Act are defeated.
- **Need To Conduct More Educational Programs To Reduce The Number Of Criminal Cases**-Witnessing the large number of criminal cases brought to each of the Gram Nyayalayas, there is an immediate need to conduct educational programs which will create a better understanding of how one should behave when there is a conflict of interests. This will help in reducing the crime rate which would lead to reduction of burden over Gram Nyayalayas.
- **Legal Aid Awareness Camps Should Be Conducted In The Villages.** The interaction with the litigants made it very clear that they were not aware about the facility of legal aid. Programs should be conducted by the Gram Nyayalaya to create awareness regarding the same because many fail to bring up their issues to the Gram Nyayalaya owing to financial restraints and high fees of the advocates.

VII. CONCLUSION

Empirical work always exposes the second side of a coin! The thing written is many-a-times different from what the ground reality is. This is the beauty of an empirical research; it flashes light on the reality and distinguishes it from the perceived reality of a doctrinal research.

Despite all the shortcomings of the Act, the institution of Gram Nyayalaya has been a very progressive step towards the rural justice system. In order to attain the objective of the Act, continuous and very well planned efforts are required. The authorities making the policies must reflect upon the suggestions which the stakeholders give. The preamble of the Act lays down the resolution of providing doorstep justice to the citizens living in the rural areas. This resolution should be complied with by reaching out to the marginalized sections of the society.