

Legislative Brief

The Gram Nyayalayas Bill, 2007

The Bill was introduced in the Rajya Sabha on 15th May, 2007 and referred to the Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: E. M. Sudarsana Natchiappan).

The Standing Committee is scheduled to submit its report by the last week of the Monsoon Session, 2007.

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Highlights of the Bill

- ◆ The Gram Nyayalayas Bill, 2007, establishes gram nyayalayas as the lowest tier of the judiciary for rural areas.
- ◆ Each gram nyayalaya shall be headed by a nyayadhikari, who shall have the qualifications of a first class magistrate and be from a cadre created by the Governor and the High Court.
- ◆ Gram nyayalayas shall try those cases whose maximum punishment is a year's imprisonment, is only a fine, or in which offence is compoundable. They shall also settle civil suits dealing with land, water, etc., as listed in a Schedule.
- ◆ In civil disputes, gram nyayalayas shall not be bound by the procedure in Code of Civil Procedure, 1908, or the rules of evidence in the Indian Evidence Act, 1872. In criminal cases, the court shall follow procedures for summary trials.
- ◆ Appeals in civil and criminal cases shall be heard by the senior civil judge and the assistant sessions judge, respectively. Further appeals are not permitted.

Key Issues and Analysis

- ◆ Various reports and earlier drafts had different views on whether nyayadhikaris should be lay persons or legally trained officers. The Bill specifies a law degree as a minimum qualification.
- ◆ The Ministry of Panchayati Raj had prepared a draft Bill in 2006 on Nyaya Panchayats that had similar jurisdiction as gram nyayalayas in the current Bill.
- ◆ The Bill envisages over 6,000 nyayadhikaris. Currently about 18 percent of judicial posts are vacant despite efforts to fill these vacancies. It is uncertain whether trained judicial officers will be available for the new posts.
- ◆ The NAC recommended that nyayadhikaris be appointed for three years at a time, without a formal cadre. The Bill proposes a formal cadre and structure.
- ◆ The Law Commission recommended that certain complaints against government officials should be under the purview of gram nyayalayas. The Bill exempts cases involving government employees from being tried by gram nyayalayas.

PART A: HIGHLIGHTS OF THE BILL¹

Context

In India over 25 million cases were pending in district and subordinate courts at the end of 2006.² The Law Commission's 114th report submitted in 1986 focussed on gram nyayalayas and cited the high backlog of cases an important factor leading to lack of access to justice. The government drafted a Bill in 2005 which was reviewed by the National Advisory Council (NAC). The Gram Nyayalayas Bill, 2007, incorporates many of the recommendations of the NAC. The main features of the current Bill are compared with the corresponding provisions in the earlier reports in the Appendix on page 6. The current Bill establishes gram nyayalayas, which shall be the lowest judicial court headed by a nyayadhikari, to provide better access to justice. The gram nyayalayas shall have exclusive and original jurisdiction over certain civil and criminal disputes.

Key Features

Gram Nyayalayas

- The state governments shall establish one or more gram nyayalayas for every panchayat or group of contiguous panchayats at an intermediate level. The Bill provides for mobile courts to be held periodically at villages where the parties reside.
- A gram nyayalaya shall be presided by a nyayadhikari appointed by the state government in consultation with the High Court. Nyayadhikaris shall be persons eligible to be appointed as first class magistrates, and shall belong to the cadre of nyayadhikaris created by the Governor in consultation with the High Court. Persons in this cadre shall possess a law degree from a recognised institution, should not be more than 45 years of age at the time of appointment, and be proficient in at least one official language of the state other than English.

Jurisdiction and Authority

- Gram nyayalayas may take cognizance of an offence on a complaint or police report and shall try all offences listed in the First Schedule to the Act. These include offences under the Indian Penal Code, 1860, relating to criminal conspiracy,³ being paid to take part in unlawful assembly or unarmed riot, and knowingly furnishing false information to public servants, as well as offences under seven other central Acts. Gram nyayalayas shall also try all offences under central Acts where the maximum punishment is imprisonment up to one year (with or without a fine), is only a fine, or is a compoundable offence.
- The Second Schedule to the Bill lists civil suits that shall fall under the purview of gram nyayalayas. These include suits related to land, water, property, wages, etc.
- The District Court may transfer all cases pending in subordinate courts that fall under the jurisdiction of gram nyayalayas to the appropriate one.
- Gram nyayalayas shall not have jurisdiction in cases involving the government or any of its officials acting in their official capacity. They shall not try any claim cognizable by revenue courts.
- If the nyayadhikari is an interested party or is related to one of the parties, he shall refer the case to the District Judge or Sessions Judge to transfer the matter to another nyayadhikari.

Procedure and Appeals

- The proceedings shall be in one of the official languages of the state other than English as far as practicable. The gram nyayalaya shall process a case within 90 days from its institution and pronounce its judgment within one week from the last date of hearing. The parties may argue their own case or engage a lawyer or authorise another person to represent them.
- In civil disputes the gram nyayalaya shall not be bound by the procedure in Code of Civil Procedure, 1908, or the rules of evidence in the Indian Evidence Act, 1872.⁴ It may adjourn proceedings to allow for conciliation between parties, subject to rules made by the High Court. The District Judge, in consultation with the District Magistrate, shall prepare a panel of people who can act as Conciliators. These shall be social workers at the village level with the required qualifications prescribed by the High Court.
- In criminal disputes gram nyayalayas shall follow the procedure for summary trials.⁵ The state government shall appoint one or more advocates in a gram nyayalaya to try such disputes. The State Legal Services Authority shall prepare a panel of advocates, and at least two shall be assigned to each gram nyayalaya and be available for the parties.

- Any appeal on criminal matters may be filed within 30 days with the Court of Sessions exercising jurisdiction over the area where the gram nyayalaya is located. The assistant sessions judge shall hear and dispose of the appeal within six months, and his decision shall be final with no appeal.
- In a civil case any appeal may be filed within 30 days with the District Court exercising jurisdiction over the area where the gram nyayalaya is located. The senior civil judge subordinate to the District Judge shall hear and dispose of the appeal within six months. His decision shall be final, with no further appeal.

PART B: KEY ISSUES AND ANALYSIS

Previous Experience with Access to Justice

The Bill is based on the recommendations of the 114th Law Commission Report written in 1986. Since then efforts have been made to improve access to justice at the village level by creating new judicial systems, including Lok Adalats and Fast Track Courts, but some studies show that the results of these have been mixed.⁶ The Law Commission addressed two main issues in the composition of the gram nyayalayas: (1) whether the judicial officers would be appointed or elected, and (2) whether they would be lay persons or trained in law.

India has had nyaya panchayats, with elected representatives, since before Independence. However the Law Commission recommended against elected nyayadhikaris because “once election is brought in, it would be difficult to keep its abuses out.” It proposed the appointment of judges from a panel.

According to the Law Commission’s Report gram nyayalayas should have a legally trained judge to assist two lay judges in their commonsense approach. The 2005 draft of the Bill had one legally trained nyayadhikari and two lay judges. However, the NAC had advised against the inclusion of lay judges, stating that, “two lay judges make the process cumbersome, dilatory and expensive”, and that, “[the] judiciary, even in local courts, needs to be insulated from partisan pulls and pressures.”

Table 1: Some Judicial Systems in Post-Independence India

	Nyaya Panchayats	Lok Adalats	Gram Nyayalayas
Flourished	From pre-Independence.	1982 onwards.	Proposed.
Personnel	Elected by local electorate.	Retired judges, volunteers.	Nyayadhikaris selected by High Court.
Norms Applied	Statute law.	Not known.	State law, conciliation.
Maximum Penalty	Fines.	Enforced by court.	Imprisonment up to one year, fines.
Appeals	Courts.	No appeal.	Assistant sessions judge / senior civil judge.
Representation	Self.	Self, lawyers.	Self, lawyers.

Sources: Galanter & Krishnan for Nyaya Panchayats and Lok Adalats; Gram Nyayalayas Bill; PRS

Differences from Earlier Recommendations & Proposals

The 2005 draft Bill, drawing on the Law Commission report, had incorporated the concept of lay judges assisting the nyayadhikari. The NAC rejected this concept; they also made other recommendations. While most of these have been incorporated, the three recommendations dealing with the position of the nyayadhikari as an honorary post (no creation of a cadre, honorarium instead of a salary, and a three year initial appointment open to renewal) have not been accepted. The Bill also proposes a panel of Conciliators consisting of social workers at the village level to whom the nyayadhikari may refer civil cases. These Conciliators shall attempt to settle the case by negotiation between the parties.

The Law Commission report recommended that cases involving harassment by local officials belonging to the police, revenue, forest, medical and transport departments should be under the purview of gram nyayalayas. The 2005 draft Bill, the NAC and the new Bill all exempt cases involving government employees from being tried by gram nyayalayas.

Nyaya Panchayats vs. Gram Nyayalayas

On June 25, 2006 the Minister of Panchayati Raj, Mani Shankar Aiyar, announced the formation of a committee to prepare a Nyaya Panchayat draft Bill.⁷ Press reports suggest that the Law Ministry had expressed some objections.⁸ Table 2 compares the main characteristics of that draft Bill and the Gram Nyayalayas Bill, 2007.

Table 2: Nyaya Panchayats Draft Bill, 2006; Gram Nyayalayas Bill, 2007

	Nyaya Panchayats Draft Bill, 2006	Gram Nyayalayas Bill, 2007
Area covered	At every panchayat area or group of panchayat areas.	Panchayat at the intermediate level.
Number of Judicial Officers	Five elected members, one reserved for a woman, and one post rotating between SC, ST, and OBC members. One Nyaya Sahayak to assist on points of law.	One nyayadhikari appointed by the state government
Minimum Qualification of Officers	Age 25 or above, not a member of local, regional or national political party.	From a cadre constituted by the government having people of less than 45 years of age, with a law degree, knowledge of one language of the state other than English, and qualified to be a judicial magistrate.
Maximum Penalty	Only fine.	One year's imprisonment, with or without a fine, or only a fine.
Appeals	Appeal to Judicial Magistrate.	Senior civil judge for civil cases; assistant sessions judge for criminal cases.
Representation	Self or representative. Bar on legal representation.	Self, lawyers.

Sources: Nyaya Panchayats Draft Bill, 2006; Gram Nyayalayas Bill, 2007; PRS

Backlog of Cases, Vacancies in Court

The Law Commission cited the large backlog of cases as an obstacle to the access to justice. The number of cases handled by district and subordinate courts in 2006 was 43 lakh, which is about 17 percent of the 2.5 crore cases pending at the end of the year. However it was three lakh more than the number of cases filed during the year. It is unclear if the cases the gram nyayalayas shall be handling will help clear this backlog.

As of April 1, 2007, there were 126 vacancies out of 725 seats in the High Courts, and 2,722 vacancies out of a 14,679 seats in the district and subordinate courts, about 18 percent of the total. The Bill envisages at least one new judicial officer (nyayadhikari) for every panchayat at the intermediate level, or at least 6,097⁹. Filling a large number of judicial posts has been a difficult task before.¹⁰ In 2002 the government created an action plan to fill the 2,216 vacancies in the district and subordinate courts at that time,¹¹ but the number of vacancies has only increased.

Procedural aspects have also impacted access to justice. The Code of Civil Procedure (Amendment) Act, 2002, was passed to simplify procedures in civil cases. Between 1998/99 and 2006, the number of pending civil cases in subordinate courts increased by seven percent, while the number of pending criminal cases has risen by 35 percent.¹²

Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996

Gram nyayalayas have been functioning in Madhya Pradesh since 2000 under a state Act.¹³ These gram nyayalayas are different from those envisaged in the current Bill in a number of ways; these are detailed in Table 3.

Table 3: Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996; Gram Nyayalayas Bill, 2007

	Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996	Gram Nyayalayas Bill, 2007
Area covered	Circle comprising of ten or more Gram Panchayats. In Scheduled areas a circle may consist of less than ten villages.	Panchayat at the intermediate level.
Number of Judicial Officers	Seven members nominated unanimously by Janpad Panchayat.	One nyayadhikari appointed by the state government
Minimum Qualification of Officers	Age 45 or above, ordinarily resident in Circle, passed matriculation (fifth standard in case of women, SC and ST members), and one person with elementary experience or knowledge of law.	From a cadre constituted by the government having people of less than 45 years of age, with a law degree, knowledge of one language of the state other than English, and be qualified to be a judicial magistrate.
Maximum Penalty	Fine of Rs. 1,000.	One year's imprisonment, with or without a fine, or only a fine.
Appeals	Before Class I Civil Judge for civil case; before Class I Judicial magistrate for criminal cases.	Senior civil judge for civil cases; assistant sessions judge for criminal cases.

Finances

The financial memorandum states that the central government shall bear the full costs of the non-recurring expenditure of gram nyayalayas, and shall share half the cost of the recurring expenditure with the state governments for the first three years. However, it does not indicate the estimated expense of the gram nyayalayas system. The Law Commission report in 1986 had recorded that Madhya Pradesh had expressed concerns about the cost of such a system.

Section 125 of Indian Penal Code, 1860

Gram nyayalayas are only allowed to try cases that have a maximum punishment of imprisonment of one year. However, cases under section 125 of the Indian Penal Code, 1860, have been included in the First Schedule to be tried by gram nyayalayas. This section deals with Indians attacking Asiatic nations with whom India is at peace, and the offence carries a maximum punishment of life imprisonment.

Notes

1. This Brief has been written on the basis of the Gram Nyayalayas Bill, 2007 introduced in the Rajya Sabha on 15th May, 2007 and referred to the Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: E. M. Sudarsana Natchiappan). The Standing Committee is scheduled to submit its report by the last week of the Monsoon Session, 2007.
2. Court News, January-March 2007, Supreme Court of India, available at: http://www.supremecourtindia.nic.in/court%20news%20jan_march_2007%20matter.pdf.
3. Gram nyayalayas shall only pass judgments on cases relating to “any other criminal conspiracy” as defined in section 120B of the Indian Penal Code – that is conspiracy to commit an act that is not punishable by death, life imprisonment or rigorous imprisonment of two years or more.
4. The Code of Civil Procedure, 1908, determines the form and manner in which civil cases are tried. The Indian Evidence Act, 1872 determines how evidence is presented in court. Gram nyayalayas have the option not to follow these procedures. The Law Commission argued that the slow disposal of cases is due to the “long, complex, unending procedures”. “Examination and cross-examination of witnesses, objections as to relevancy, form of question, leading questions, Sections 91 and 92 of the Evidence Act, all may have to be kept aside for resolving such a simple dispute.”
5. Summary trials are governed by the Code of Criminal Procedure, 1973. They are for petty offences in which the maximum punishment does not exceed two years’ imprisonment. The evidence is gathered in a quicker manner during summary trials leading to earlier conclusions.
6. See Marc Galanter and Jayanth K. Krishnan, “Bread for the Poor: Access to Justice and the Rights of the Needy in India” Hastings Law Journal, Vol. 55, p. 789, 2004. They observe that although the Lok Adalats provide a form of justice, “the evidence [they] have gathered and the queries [they] raise do place in question the ultimate fairness of Lok Adalats.” Pg. 828
7. “Panel to draft nyaya panchayat bill”, The Hindu, Jun 25, 2006,
8. “Law ministry: Nyaya Panchayat Bill is 'unconstitutional'”, Times of India, 8 July, 2007,
9. Annual Report 2005-06, Ministry of Panchayati Raj indicates that there are 6,097 panchayats at the intermediate level.
10. D Bandyopadhyay, “Nyaya Panchayats”, Economic and Political Weekly, December 17, 2005, pp 5372-75.
11. Milestones 2002, Press Information Bureau release, available at: http://pib.nic.in/archieve/ppinti/milestones2002/milestones_02_law_justice.html.
12. “Judicial System and Reforms in Asian Countries: the Case of India”, Indian Law Institute ed., 2001, available at: <http://www.ide.go.jp/English/Publish/Als/pdf/03.pdf>.
13. “Major Policy Decisions Taken by the State Government of Chhattisgarh”, <http://www.chhattisgarh.nic.in/policy/cpolicy.htm>.

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Appendix: Comparison of Earlier Reports and Current Bill

	Law Commission Recommendations	2005 Draft Gram Nyayalaya Bill	NAC recommendations	Gram Nyayalaya Bill, 2007
Personnel	Panchayati Raj Judge and two lay judges.	Nyayadhikari and two lay judges.	Nyayadhikari.	Nyayadhikari.
Qualifications	Panchayati Raj Judge qualified to be a Judicial Magistrate, First Class. No set qualifications for lay judges.	Nyayadhikari qualified to be a Judicial Magistrate of the first class. No set qualifications for lay judges.	Nyayadhikari to be a law graduate.	Nyayadhikari qualified to be a Judicial Magistrate of the first class.
Appointment	Judge from State cadre, lay judges from panel created by District Judge, Sessions Judge, District Magistrate.	Appointed from cadre created by Governor in consultation with High Court and [only for nyayadhikari] State Public Service Commission.	Appointed from panel by Governor in consultation with High Court to honorary position for a period of three years, open to reappointment.	Appointed from cadre created by Governor in consultation with High Court.
Jurisdiction	Jurisdiction over cases involving land and water disputes, family disputes, revenue cases, and other petty disputes listed in Law Commission report.	Jurisdiction over cases involving land and water disputes, family disputes, listed in Schedules to Bill that cannot be tried by special / fast track courts, and compoundable offences. No cases cognizable by revenue courts, or against government servants.	Jurisdiction over cases involving land and water disputes, family disputes listed in Schedules to Bill, compoundable offences. No cases cognizable by revenue courts, or against government servants.	Jurisdiction over cases involving land and water disputes, family disputes, listed in Schedules to Bill, compoundable offences. No cases cognizable by revenue courts, or against government servants.
Maximum Punishment	No set pecuniary or prison limits.	Imprisonment up to one year, fines.	Imprisonment up to one year, fines.	Imprisonment up to one year, fines.
Appeals	Revision petition to correct matters of law to lie before District court in civil cases. Appeal against substantive prison sentence may be before Sessions Court.	Appeal to assistant sessions judge / District Court.	Only one level of appeal to assistant sessions judge / senior civil judge.	Only one level of appeal to assistant sessions judge / senior civil judge.
Representation	Self or lawyers made available by State Legal Services Commission for civil cases. Self or lawyers for criminal cases.	Self or lawyers in civil dispute. Self or lawyers in criminal dispute, lawyers assigned by State Legal Services Authority.	Self or lawyers in civil dispute. Self or lawyers in criminal dispute, lawyers assigned by State Legal Services Authority.	Self or lawyers in civil dispute. Self or lawyers in criminal dispute, lawyers assigned by State Legal Services Authority.

Sources: 114th Law Commission Report, NAC, Gram Nyayalayas Bill, PRS