
UNIT 19 PANCHAYAT RAJ LAW

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19.0 INTRODUCTION

The village is an important unit in the organization of Indian social life. The villages in India are known to have been governed by their own institutions of self-governing nature since the time immemorial. Even before the emergence of democratic polity, the democratic ideals and institutions flourished in ancient and medieval India. In spite of increasing industrialization, India is still a land of villages and her economy is mainly rural (Visalakshi, 1967).

After independence, the urge for a system of local Government suited to Indian conditions had become very strong. Accordingly, suitable provisions were incorporated under the Indian Constitution. Several development and welfare programmes were entrusted with the village panchayaths right from 1952. The Government of India appointed a Committee in 1957 headed by Balwant Rai Mehta to suggest measures to rectify the defects of the Panchayat administration and recommended a three tier system of Panchayat (The Government of India Report, 1957). It became the kingpin of the Government policy for the democratic decentralization of power and for the revitalization of the community development. As a result of further efforts aimed at local self-government the Panchayat Raj Law and system became increasingly vogue and effective.

Mahatma Gandhi, who cherished the idea of Gram Swaraj, said that a country cannot be developed without the participation of villages and he hoped that villages would be reformed socially and economically. Other prominent leaders

like Jawaharlal Nehru and Jaya Prakash Narayan had already indicated that the major task of independent India would be to take democracy at the grass root level and to involve the rural masses in the task of national reconstruction. Hence, decentralization of powers to local self government is highly needed (Shakuntala Sharma, 1997).

Decentralization does not mean division of the functions of the State between the State Government and local bodies, each discharging its functions independently. Decentralization means and includes devolution of State functions on local bodies. It is nothing but transferring decision-making powers and functions from the control of the State Government to the local bodies with a view to transforming the society. Democratic decentralization seeks to associate the people's participation in the decision-making process at the grass-roots level (Debesh Chakraborty, 1981). When the people living in villages become politically conscious, then only India will progress.

Therefore, in this Unit, we will be focusing on the Panchayat Raj Law and the functioning of the Panchayat Raj institutions including those relevant for administration of justice at the grassroots level in India.

19.1 OBJECTIVES

After you go through the Unit, we expect you to be able to:

- Describe the Panchayat Raj Law and Institutions;
- Analyze the advantages of decentralization of governance; and
- Evaluate the functions of Panchayat Raj Institutions as grassroots level agencies in the realization of the goals of democracy enshrined in the Indian Constitution.

19.2 PANCHAYAT RAJ SYSTEM: CONSTITUTIONAL BASIS, POWERS AND FUNCTIONS

In this section, we will look at the Panchayat Raj in its historical perspective, including the constitutional basis and its powers and functions, among other things.

19.2.1 Constitutional Basis of Panchayat Raj System

The constitutional basis of the Panchayat Raj System can be traced to the Constituent Assembly debates, which subsequently led to the incorporation of suitable provisions in the Constitution of India.

19.2.1.1 Constituent Assembly Debates

The Panchayat was an important institution of ancient India too, as it served as a bridge between the State and the community. The debate in the Constituent Assembly in 1948 on the draft constitution confirmed the popularity of Panchayat. Members of the Constituent Assembly averred that the panchayat was an ancient Indian institution and in our blood (Mathew George, 2000). Pandit Jawaharlal Nehru stressed, the power and authority must be transferred to elected panchayat so that the fear that the villages would make a mistake must not be allowed to

come in the way. Gandhiji observed: grama panchayat shall be entrusted with the dispensing of justice. The poor farmers need not go out of their village, need not spend hard-earned money and also need not waste their valuable time to meet the litigations in towns where they may be exploited by the lawyers (Dub, 1977, p.60).

19.2.1.2 Constitutional Provisions

With this background certain provision were incorporated in the Indian Constitution for the organization of *village panchayats*. Article 40 of the Indian Constitution directs the State to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The object of this provision is to introduce democracy at the grassroots. These panchayats are expected to be the training grounds for the development of democratic traditions. As panchayat institutions were reorganized and oriented to a wider range of functions, it was felt that consideration of efficiency in performance of the assigned developmental and governmental tasks required relief from the judicial work load and, hence, *Nyaya-panchayats* came into existence.

Many States in our country have enacted laws for the organization and proper functioning of panchayats. But, unfortunately these panchayats were not functioning satisfactorily. Elections to panchayats had been very irregular and uncertain. In order to revitalize the Panchayat Raj Institutions and urban local bodies bold initiative was taken by late Prime Minister Rajiv Gandhi to grant constitutional status and backing to rural local self-government institutions and, thereby, deepen and strengthen our democratic system. Towards this end Parliament enacted the Constitution 73rd and 74th Amendment Acts, 1992 and incorporated Part-IX in the Constitution of India regarding the structure, composition, election and scope of powers of panchayats at the district, intermediate and village levels. Until the 73rd Amendment Act was passed, formation, structure, composition, powers, functions, elections and such other matters regarding panchayats were entirely looked after by the State legislature and the Government. With the coming into the effect of the 73rd Constitutional Amendment Act, the legislative and executive action of the State as regards panchayats will have to be now in accordance with the provisions of Part-IX of the Constitution. The underlying idea of this amendment is to make panchayats the vibrant units of local administration in the rural area. The Amendment is regarded to be historic as it is designed to establish strong, effective and democratic local administration which may lead to rapid implementation of rural development programmes (Jain, 2009). This Amendment was passed in pursuance of the Directive Principles of the State Policy contained in Article 40. This would help in realizing the objectives of Gram Swaraj, the idea cherished by Mahatma Gandhi. It will go a long way in ensuring democratic functioning of the democratic institutions at the grassroots level.

The 73rd Amendment Act envisages the *Gram Sabha* as the foundation of the Panchayat Raj system to perform functions and powers entrusted to it by the State legislatures. The amendment provides for a three-tier Panchayat Raj system. The Act provides that Panchayat bodies will have an assured duration of five years, with elections mandatory after this period. Article 243A provides that the Gram Sabha may exercise such powers and perform such functions at the village

level as the legislature of a State may by law provide. 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level. Article 243B visualizes three-tier Panchayat Raj system. Small States having a population not exceeding twenty lakhs have been given an option not to constitute the panchayats at the intermediate level.

The legislature of a State may, by law, provide for representation of following persons in panchayats:

- The chairperson of the Panchayats at the village level,
- The chairpersons of the panchayats at the intermediate level, in the panchayats at the district level,
- The members of the Lok Sabha and the Legislative Assembly of the State representing constituencies.
- The members of the Rajya Sabha and Legislative Council of the State where they are registered as electors in Panchayat at the intermediate level.

Article 243D provides that in every Panchayat seats shall be reserved for the Scheduled Castes and Scheduled Tribes. The number of seats so reserved shall be in the same proportion to the total number of seats to be filled by direct election in the Panchayat as the population of SCs and STs in that Panchayat area, and such seats may be allotted by rotation to different constituencies in Panchayat. Out of total number of seats reserved, not less than 1/3 seats shall be reserved for women belonging to the SCs and STs. In general, out of total number of seats to be filled by direct election in every Panchayat not less than 1/3 seats shall be reserved for women (including the number of seats reserved for SCs and STs). Such seats may be allotted by rotation to different constituencies in a Panchayat. According to Article 243E every Panchayat, unless dissolved sooner under any law for the time being in force, shall continue for five years from the date of its first meeting.

Indian Constitution also guarantees that under Article 243-H the State is empowered to make law for the imposition of taxes by the Panchayats such as levy, collect and appropriate such taxes, duties, tolls and fees in accordance with the procedure and such limits. The State by such law is empowered to make grants-in-aid to the panchayats from the Consolidated Fund of the State. The Constitution also guarantees that the superintendence, direction and control of the preparation of electoral rolls and conduct of elections to the Panchayats shall be vested with State Election Commission. The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies shall not be called in question in any court.

19.2.2 Structure and Functioning of Panchayat Raj System

Panchayat Raj is the democratic self-governing institution of a village with its upper linkages. It is a process of people's involvement in their affairs at the grassroots level. It means that the Panchayat Raj System consists of a three-tier structure – the *Village Panchayat* at the village level, *Panchayat Samiti* at the middle level and the *Zilla Parishad* at the district level. The team of Balwantrai Mehta emphasized that development cannot progress without responsibility and power. Community development can be real only when the community

understands its problems, realizes its responsibilities, exercises the necessary powers through its chosen representatives and maintains constant vigilance on local administration. Panchayat Raj extends to establish strong linkages between villages, taluks and districts (Shakuntala Sharma, 1997).

At the grassroots level, village panchayat is both an end and means. As a means, it should emerge as a system of democratic local government discharging all functions relating to integrated rural economy. As an end, it is an inevitable extension of democracy to the villages. Panchayat Raj is not a new concept. Panchayats have been a part of rural cultural heritage of India. From the times immemorial Panchayats have enjoyed the confidence of the people. The system survived in spite of turmoil and changes, because the village folk were fully confident of their own capabilities of sound thinking and resorting to right approaches to problems.

'Panchayat' literally means, *an assembly of five wise and respected elders chosen and accepted by the village community*. They were considered as the incarnation of God. Panchayats had a wide spectrum of activities covering executive, administrative, developmental and judicial activities in ancient India. Panchayat Raj was inaugurated in 1959. The panchayats, which formerly acted in advisory capacity to the community development programme, now undertook to assume full responsibility for carrying it ahead. The Balwant Rai Mehta Committee was set up by the National Development Council in 1957 to enquire into the questions of economy and efficiency, and suggest measures for the re-organization of community development programme and national extension service (Vishnuo Bhagwan and Vidya Bhushan, 2005). The Committee suggested three-tier system of rural local government. It was termed as '*Democratic Decentralization*' which ultimately began to be called as 'Panchayat Raj'.

19.2.2.1 Legislative Efforts to Strengthen the Functioning of Panchayat Raj System

Mehta Report is considered as a historic document. It is described as the '*master blueprint*' and a sort of '*Bible of Panchayat Raj*'. By the end of 1963, Panchayat Raj was established in most of the Indian States. By 1965, all the States of India had enacted legislation for the introduction of panchayats in their area. In order to restructure and reorient the entire rural setting in India, the Constitution 73rd Amendment Act, 1992 brought several changes. The Act aims at creating Gram Sabha to perform such functions as may be entrusted to it by law. The Act provides for the reservation of seats for members belonging to Scheduled Castes and Scheduled Tribes in proportion to their population. Further, it also provides that not less than one-third of such seats shall be reserved for women (Vibhuti Singh Shekawat, 1998). The tenure of every panchayat shall be five years unless dissolved earlier. After dissolution, a new panchayat shall be elected within six months to discharge the functions for the remaining period and not for five years. Article 243G of the Constitution of India has spelt out the powers, authority and development of panchayat, which is the basic unit of the Panchayat Raj system. Apart from constitutional provisions, every State has enacted statutory provisions called the Panchayat Act within the State limits.

19.2.2.2 Powers and Functions of Panchayats

The functions of the panchayats are to prepare annual plans for the area, mobilization of relief in natural calamities, taking of census, registration of births, deaths and marriage, maintenance of small irrigation tanks and drinking water wells, construction and maintenance of village roads, promotion of literacy, implementation of family welfare programmes, etc. The panchayat shall also be vested with the power to levy and collect taxes within one year of commencement of this Amendment Act. The Governor of the State shall constitute a Finance Commission to review and allocate finance to the panchayats. However, the Act is silent about the executive powers of the Panchayat Raj Institutions with regard to recruitment and appointment of staff under them.

Twenty nine subjects are placed under the jurisdiction of the panchayats. They are enumerated in the XI schedule of the Indian Constitution. These subjects include: agriculture, implementation of land reforms, minor irrigation, animal husbandry, dairy, poultry and fisheries, social-forestry, small-scale industries, Khadi and village industries, rural electrification, roads, non-conventional energy, education including adult education, poverty alleviation programmes, family welfare, women and child development, the welfare of the weaker sections, etc. The Act also mandates for the appointment of State Election Commission to collect fresh population data and making reservations. It is a step to confirm that the States have embarked on the process of devolution of power to the masses.

It is to be noted that the Constitution of India now mandates structural uniformity, tenure-based periodicity and regularity of elections and bye-elections for the panchayats and, thus, the Panchayat Raj Institutions gained a stable niche in India’s administrative system. However, there is an apprehension that the chairpersons from the segments which are reserved for SCs and women might become pawns in the hands of politicians and the male members of the family respectively who would manipulate them to their advantage.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.
 b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

1) What is Panchayat Raj?

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2) Explain the constitutional provisions relating to Panchayat Raj.
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3) Highlight the recommendations of Mehta Committee on Panchayat Raj.
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19.2.3 Gram Sabha: Role, Powers and Responsibilities

Public vigilance is the price of democracy. Gram Sabha is a long-standing institution which will enable the people to establish direct democracy in the society. The *Gram Sabha or Village Assembly* lies at the base of Panchayati Raj superstructure. It may exercise such powers and functions at the village level as the legislature of a State may by law provide. Gram Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level. That means, it consists of all the adult citizens who are entitled to vote. 73rd Amendment to the Indian Constitution, thus, envisages the Gram Sabha as the foundation of the Panchayat Raj system.

Gram Sabha is a body of the people which has its own role and responsibility to be discharged. It should be in the hands of the people and should have freedom and flexibility for action. But, one should recognize that it is a constitutional entity which has to function within a set of rules and procedures as its decisions are binding. Gram Sabha can ensure transparent administration by performing its functions. It brings social harmony and community feeling among the people, conduct social audit, establish social justice, plan for development, achieve equality and expect participation of the people in the development activities of the community. Gram Sabha would also restrain corruption in the society to some extent.

According to the laws of most of the States, Gram Sabha is called at least twice a year, usually after *Rabi* and *Kharif* crops are harvested. In Jammu and Kashmir and Orissa, it meets only once in a year. In some other States, its meeting can be convened on the requisition of certain proportion of voters (at least 1/5th in most cases). The village panchayat owes responsibility to Gram Sabha. It presents its budget accounts of the previous year and the annual administrative report before Gram Sabha. Projects of local development, proposals for taxation and village

production plan have to secure the approval of Gram Sabha before it is implemented by the Panchayat. In Punjab, Bengal and Assam, the Village Panchayat is elected by Gram Sabha. In Bihar, Gram Sabha elects 50 of the members of the executive council and its President. In Tamil Nadu, though Gram Sabha was created through law and functions were assigned statutorily, Gram Sabha was not convened by the President of Gram Panchayat (Palanithurai and Raghupathy, 2006).

19.2.3.1 Evaluation of Working of Gram Sabha

The Gram Sabha has not been an active body. Its attendance is generally thin, probably because of low level of political education of the members and too much diffusive character of its membership. Proposals are taking place to strengthen the working of Gram Sabha so that it could effectively control the Panchayati Raj leadership. Giving it right to recall and making its meeting more effective and attractive are some of the important proposals which may be given due consideration. In fact, Gram Sabha is at an infant stage and necessitates constant nurture before it can develop into a base organ of Panchayati Raj. Through the political education of the masses, larger participation in development programmes, more effective control over Panchayat leadership and better mobilization of resources Gram Sabhas can be made more effective centres of political energy. It is expected that the Panchayats pay attention to the advice and suggestion of the Gram Sabha without reducing themselves to mere executive bodies.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under "Answers to 'Check Your Progress' Questions".

4) Panchayat Raj System is both a means and an end of democracy. Explain the statement with reasons.

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5) Explain the powers and functions of the Panchayats.

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6) Define Grama Sabha. Specify its composition.

7) What are the functions of the Grama Sabha?

19.3 ADMINISTRATION OF JUSTICE AT THE LEVEL OF PANCHAYAT

In this section, we will present you an overview of how justice is intended to be delivered at the level of Panchayats with special reference to the legislative efforts in this regard. Let us look at Nyaya Panchayats first.

19.3.1 Nyaya Panchayats

To administer justice at the village level Nyaya Panchayats were established. The earliest Nyaya Panchayats were the 'Village Courts' established under the Village Courts Act of 1988. The Royal Commission on Decentralization, 1909 recommended of revival of Nyaya Panchayats having both civil and criminal jurisdiction in petty cases arising within the village. In May 1915, by a resolution passed by the Government of India, the matter regarding the establishment of Nyaya Panchayat was left to the State Government. For the first time in the year 1920, Bombay Village Panchayat Act was passed and that resulted in the conduct of a series of *Panchayat Adalat*. However, select committee of the legislative council opposed the investing of judicial powers on Panchayats. In 1933, a village bench consisting of elected members and outsiders were created as per provisions of the Bombay Village Panchayat Act in Bombay. Since independence, almost all States enacted Village Panchayat Acts as guided by the directive principles and have resulted in the creation of statutory Nyaya Panchayat legislation. The *Village Panchayat* and *Nyaya Panchayat* existed as dual entities in order to have separation of judiciary from the executive (Kerala Calling, 1997).

A general account of the System of Nyaya Panchayat concerning its constitution and composition is as follows. The Legislative details concerning a Nyaya Panchayat vary; due regard given to regional diversity. Thus, the main features

of Nyaya Panchayat organization which have now become more general are that, the Naya Panchayats are established for a group of villages usually covering 7 to 10 villages. It usually covers a population of 14,000 to 15,000 villagers.

The essential prerequisites for the member of a Nyaya Panchayat are that the member must be able to read and write the State language, must not hold an office of Sarpanch or be a member in the samiti, parishad or State or Union legislature. Nyaya Panchayat has a chairperson and secretary elected by its members; one-third of its members retire every second year. Each Gram Panchayat, which is an elected body, elects members for Nyaya Panchayat. In some States like U. P. and Bihar, there is combination of both elections and nominations, and such nomination is done by consensus. In the State of Kerala, all the Nyaya Panchas are nominated and in the Union Territory of Delhi all of them are directly elected. The Law Commission, in its 14th Report (1969) said that in principle it did not support elected judiciary and it did not regard Nyaya Panchayat as judiciary in the proper sense of the term, but rather as 'tribunal' which has to inspire the confidence of the villagers (Law Commission Report, 1958, pp.857, 896-902).

The jurisdiction of Nyaya Panchayat is both civil and criminal. Civil jurisdiction of Nyaya Panchayat is confined to pecuniary claims of the value of Rs.100 and by agreement among the parties; it may be raised to Rs.200 involving money due on contracts not affecting any interest in immovable property, compensation for wrongfully taking or damaging property and recovery of movable property. The criminal jurisdiction is comparatively extensive such as criminal negligence or trespass, nuisance, possession or use of weights and measures, theft, misappropriation with pecuniary limit as low as Rs.25 to 50, intimidation, perjury and attempt to evade a summons and so forth. It has authority to levy fines, but they have no power to sentence offender to imprisonment, substantively or in default of fine. The State Government has the power to enhance the jurisdiction of Nyaya Panchayat as well as to diminish it if there is admission of injustice (Pillai, 1974, pp.56-57). More emphasis is given on the amicable settlement of disputes in the system of Nyaya Panchayat. Therefore, the method of conciliation is being emphasised over adjudication. In the States of Bihar and Kerala, it has been made obligatory on Nyaya Panchayat to first resort to conciliation in all matters including criminal cases, but in the state of Rajasthan conciliation is permissible though not obligatory.

The procedures adopted by Nyaya Panchayat are simple and flexible. The revenue for the functioning of Nyaya Panchayat is derived from the fine deposited to the Nyaya Panchayat and contributions of the village panchayats. The complaints may be made orally or in writing, the hearing before it is informal in nature, panchas confer among themselves and arrive at a decision, which is pronounced in open Court. The final judgment is written and read out in open Court. It is signed by the parties to the dispute, signifying the communication of judgment to them. Nyaya Panchayat has power to issue summons, to proceed ex-parte in case of recalcitrant defendant / respondent. It has power to levy execution through attachment orders in unfulfilled decrees. The Nyaya Panchayat maintains records of the civil and criminal matters, its judgments, gist of depositions by the witnesses and parties, Court fees and fines, summons and notices, and the expenses. The Sub-divisional or District magistrate can transfer a case from one Nyaya Panchayat to another, in case any miscarriage of justice has occurred. In addition to the

power of appeals from Nyaya Panchayat to the magistrate Court, parties have a privilege to apply for revision of a decision of Nyaya Panchayat (The Study Team on Nyaya Panchayat-1958, Report 1962, p.128). The Law Commission of India in its 14th Report (1969, pp.194-195) had insisted upon the need of short-term training programmes of the Panchas enabling them to act judicially in the sense that they must bear in mind that all are equal before law and that the law is no respecter of persons. They must conform to the principles of natural justice and must avoid bias, ill-will, affection and appear to have so avoided such ills.

Thus, the fervor for institutionalization of Panchayat Raj system and its democratic decentralization has contributed to the creation of Nyaya Panchayat. Through Nyaya Panchayat the administration of justice is brought at the doorstep of the villages. The Law Commission in its 14th report stressed that Nyaya Panchayat would educate the villager in the art of self-government. The Nyaya Panchayat is said to be the lowest rung of state system of administration of justice as well as a sub-system of the panchayats as organs of local self-government (The Manual for the Nyaya Panchayat, 1963).

19.3.2 Grama Nyayalayas

The Law Commission of India in its 114th Report on Gram Nyayalaya (August, 1986) suggested its establishment so that speedy, inexpensive and substantial justice could be provided to the common man. The Gram Nyayalayas Bill, 2007 was broadly based on the recommendations of the Law Commission. It provided for the establishment of Gram Nyayalayas for the purpose of providing access to justice – both civil and criminal – to the citizens at the grassroots level and to ensure that opportunities for securing justice are not denied to any citizen for reasons of social, economic or other disabilities and for matters connected therewith. The preamble of the Bill reverberated Article 39A of the Indian Constitution. The objective behind the introduction of this Bill is that the Government by bringing forward this Bill can ensure access to justice to citizens at grass root level. It will help the earnestness of the Government to clear the backlog of cases to render inexpensive, easily available, non-formal and substantial justice. However, there are still doubts as to whether setting up of Gram Nyayalayas as proposed in this Bill alone will reduce pendency of cases.

In New Delhi, Union Cabinet on April 24th 2008 approved the Bill to reduce pending Court cases (www.news.vakilno1.com/labels/law/amendments (April2008)). According to an official note, the cabinet gave its approval for withdrawal of the Gram Nyayalayas Bill, 2007 pending before Rajya Sabha, and introduction of the Gram Nyayalayas Bill, 2008 in the upper house in the light of the recommendations of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, and the Law Ministers and Law Secretaries, and the Registrar Generals of High Courts Conference.

19.3.2.1 Jurisdiction of Grama Nyayalayas

The 2008 Bill provides that a Gram Nyayalaya shall be the lowest Court of subordinate judiciary in the State. However, the Committee takes cognizance of the fact that as per Section 29 of the Code of Criminal Procedure, 1973 the Court of a Magistrate of the Second Class is the lowest Court. Gram Nyayalayas will exercise jurisdiction over all offences under the Central Acts where the maximum punishment provided for is imprisonment not exceeding one year, whether with or without fine.

The Gram Nyayalaya will be in addition to the regular civil and criminal Courts. The Gram Nyayalayas will cover both civil and criminal cases of a simple nature as specified in the Schedule to the proposed legislation. The Nyayalayas will follow summary procedure in criminal cases and a simple procedure having regard to the principles of natural justice in civil cases. The proceedings in these Nyayalayas will be less expensive, free from protracted procedural wrangles, quick and available at the grassroots level, accessible to the common man and render justice to him as enshrined in Article 39A of the Constitution.

The Gram Nyayalayas shall not have jurisdiction to take cognisance of the following classes of disputes:

- A dispute by or against the Central Government or the State Government or a public servant for anything which is in good faith done or purported to have been done by him in his official capacity;
- A dispute where one of the parties is a minor or a person of unsound mind;
- Any claim cognizable by revenue Courts.

Further, the Nyayadhikari, in the interest of justice, may close a case and advise the parties to approach the appropriate Civil Court in respect of matters relating to any complicated issue of fact or of law, which should be decided by any other competent Court of law.

19.3.2.2 Functioning of Grama Nyayalayas

The proposed Gram Nyayalayas shall be presided over by a *Nyayadhikari*. As per the proviso, Nyayadhikari shall be a person qualified/eligible to be appointed as a Judicial Magistrate of the first class and belonging to a cadre of Nyayadhikaris constituted by the Governor in consultation with the Chief Justice of the High Court. Preference and the qualification required for the same is just a bachelor degree in law with or without prior experience in the Bar. The Bill is silent regarding the term of office, salary, allowances and other terms and conditions of the services of the Nyayadhikari. To ensure some uniformity throughout the country, provisions addressing the same would be vital and necessary.

The Nyayadhikari shall periodically visit the villages under his or her jurisdiction and conduct proceedings in close proximity to the place where the parties normally reside, thus, functioning as a mobile Court. However, mentioning 'periodical' visits to villages by the Nyayadhikari, without prescribing number of visits, might not serve the purpose. The Bill needs to prescribe a minimum number of visits to be made. The Bill is silent regarding the pecuniary jurisdiction of the Gram Nyayalayas, which also needs to be specified. Empowering Nyayalayas to take up a dispute without any ceiling in the matter of pecuniary jurisdiction would be a risky venture, as the Nyayalayas shall consist of Nyayadhikaris who hardly have any prior Court experience. Thus, a pecuniary jurisdiction of a specific amount is needed.

The Bill directs Gram Nyayalayas to make efforts for conciliation and settlement of civil disputes for which appointment of Conciliators by the District Judge in consultation with the District Magistrate has been envisaged. However, no minimum qualification is prescribed for their appointment. There is a need for some kind of uniformity amongst the States in regard to qualification, tenure, and the method of appointment and remuneration of the Conciliators. Since the

Conciliators play a very important role, any disparity would not be conducive to their working. Sufficient incentives including enhanced remuneration should be paid to the Conciliators and preference in appointment should be given to those with legal background apart from having experience in social service. This is vital to reduce nepotism and interference and to provide better solutions to the people.

- **Speedy Justice:** A deep-rooted problem in the functioning of the Courts, particularly in the Trial Courts, is the granting of frequent adjournments, mostly on flimsy grounds. The Bill under clause 33(9) gives Nyayalayas the right to adjourn the hearing beyond the following day provided the necessary reasons are recorded in writing. This very provision would undermine the objective of ensuring speedy justice, as the Judges usually tend to act with unfettered discretion. The Bill has armed the Nyayadhikari with directions 'not be bound by the procedure laid down in the Code of Civil Procedure, 1908' but to be guided by the principles of natural justice. Further, the Gram Nyayalayas have also been vested with powers to proceed ex-parte if any of the parties does not appear. To regulate the discretion, the Bill must lay down the exceptional circumstances when an adjournment may be granted. An appeal from the judgment of the Gram Nyayalaya will lie with the Sessions Court, which will be heard and disposed of within six months from the date of filing of the appeal.
- **Coordination:** All the officers including the Nyayadhikaris, conciliators, local police officers, and other officials need to coordinate with each other for the effective implementation of the Act. They need to work together to ensure justice within the rural mass. In particular, the Bill calls for a high degree of coordination for implementation between the State Government and the High Court. The coordination of prescribed tasks should be within their powers as laid down and need to ensure that neither overrides the other. In other words, either of them should not influence the other.
- **Grounds for Removal of Nyayadhikari:** Incompetence is one of the grounds for removal from the office of Nyayadhikari as provided in clause 8(1). However, incompetence is not a crime. Hence, a Nyayadhikari who has been removed based on incompetence should not be barred from other appointments in Government as stated in clause 8(2). His merits are to be acknowledged.

The Bill seeks to address, on top priority, the problem of tackling mounting arrears in Courts through decentralization of the system of administration of justice by providing for a participatory forum of justice within the Constitution. The Gram Nyayalayas Bill, 2008 was passed by the Parliament on December 21, 2008. The Rajya Sabha passed the bill on December 17, 2008. This bill ensures that inexpensive and efficacious justice possible is delivered to the remotest areas, as it provides for holding of mobile Courts and conducting proceedings by the 'Nyaya Adhikari' (Judicial Magistrates First Class) by periodically visiting the villages (www.cuts-international.org). The quality of justice through Gram Nyayalayas would finally depend upon the nature of the forum that will be set up ultimately to render justice. By setting up of Gram Nyayalayas for every Panchayat, the Constitutional goal to be achieved is to make justice inexpensive, easily available, non-formal and substantial.

Thus, at the grassroots level the alternative disputes redressal mechanisms includes Gram Panchayats, Nyaya Panchayat and the Gram Nyayalaya. The Gram Nyayalayas Bill is yet to get the accent of the President of India. From the above study it is evident that The Gram Nyayalaya Act will provide for the establishment the Gram Nyayalaya, which will be economical, with simple procedure and quick resolution of disputes at the grassroots level. It will be easily accessible to the villagers and common people in India for resolving their disputes of particular nature at the pre-litigation stage itself. Thus, it can be said to be one of the methods that can be adopted progressively as one of the solutions to the problem of judicial arrears.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

8) Discuss the main features of the Nyaya Panchayat.

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9) Explain the role of Grama Nyayalayas.

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19.4 LET US SUM UP

We have presented you the Panchayat Raj System highlighting its Constitutional basis, structure, powers and functions as well as how it can be strengthened to make it effective local self-government in the democratic system of India. Further, we have discussed the role, powers and responsibilities of Gram Sabha vis-à-vis its place in realization of the goal of decentralization of administration in a democratic set-up. Towards the end, we have focused on institutionalization of administration of justice at the level of Panchayat touching upon Nyaya Panchayats and Grama Nyayalayas along with their jurisdiction and functions.

We hope you have got the significance of Panchayat Raj institutions not only in democratic decentralization of administration but also in effective administration

of justice at the grassroots level. We believe that you are now better equipped to strengthen democracy at the grassroots level, as that will inevitably lead to better functioning of the institutions at the higher levels as well!

19.5 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) Panchayat Raj is the three-tier structure of the rural local Government at the village, taluka and the district levels. It is based on democratization and devolution of powers and resources for the specific purpose of planning and implementation of community development programmes with active, effective and spontaneous participation of the rural people.
- 2) Panchayat Raj system has its basis in the constitutional provisions. To introduce democracy at the gross root level, Article 40 of the Indian Constitution was incorporated under the Indian Constitution. It directs the State to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The 73rd Constitutional Amendment Act envisages the Gram Sabha as the foundation of the Panchayat Raj system to perform functions and powers entrusted to it by the State legislatures. The amendment provides for a three-tier Panchayat Raj system. The Act provides that Panchayat bodies will have an assured duration of five years, with elections mandatory after this period.
- 3) The crux of recommendations of Mehta Committee on Panchayat Raj included the following. The panchayat samiti was to be constituted consisting of the President, and members with due representation from the Schedule Castes and women. The budgets of the panchayats were to be scrutinized by the Panchayati Samiti and those of panchayati samities by Zilla parishads. The panchayat samiti was to enjoy independent sources of revenue. It should work as a main agency of development work. The State Government was empowered to exercise control over these bodies.
- 4) In its structure and functioning, the Panchayat Raj System is the end as well as the means to make democratic-functioning more effective. As we know, Panchayat Raj is not a new concept. Panchayats have been a part of rural cultural heritage of India. Since the times immemorial, Panchayats have enjoyed the confidence of the people. The system survived in spite of turmoil and changes, because the village folk were fully confident of their own capabilities of sound thinking and right approach to problems. So, as a means, village Panchayat being at the gross root level, should emerge as a system of democratic local self-government, discharging all functions relating to integrated rural economy. As an end, it is an inevitable extension of democracy to the villages.
- 5) Statutorily, the Panchayats have *two types of functions* — obligatory and optional. With the passage of time and occurrence of new developments, such a division of functions has become obsolete. Now, the panchayats have municipal functions like public health, social education, public safety, public construction, etc. These functions include: lighting, medical relief, safe drinking water, sanitation, public recreations, registration of births, deaths and marriages, tree plantations, etc. Panchayats will also discharge social

welfare functions which include famine or emergency relief, aid to the handicapped, women and children, enforcement of Child Marriage Restraint Act or other similar social-welfare laws.

Powers of Panchayats: In order to discharge the above said functions, Panchayats have been given specific powers. These are regulatory powers like to remove a nuisance from public places or to remove a danger arising from the bad conditions of a house. It may punish the defaulter by imposing fine. It may reserve a well or a tank exclusively for drinking purposes. Panchayats also have judicial powers like hearing of civil and criminal suits. They can levy taxes prescribed under the statute.

- 6) Grama Sabha is otherwise known as Village Assembly. According to Article 243A of the Indian Constitution the Grama Sabha is a body which exercises its powers and performs such functions at the village level as the legislature of a State may by law provide. It is a body of people which has its own role and responsibility to be discharged. Grama Sabha consists of a body of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at village level. That means it consists of all the adult citizens who have been entitled to vote. Grama Sabha lies at the base of Panchayati Raj superstructure.
- 7) Gram Sabha can ensure transparent administration by performing its functions, viz. it brings social harmony and community feeling among the people; it conducts social audit, establishes social justice, and plans for development; and it strives to achieve equality and expects participation of the people in the development activities of the community. Gram Sabha would also restrain corruption in the society to some extent.
- 8) The main features of Nyaya Panchayats organization which have now become more general are as follows.
 - The Naya Panchayats are established for a group of villages usually covering 7 to 10 villages.
 - It usually covers a population of 14000 to 15000 villagers.
 - The essential prerequisites for the member of a Nyaya Panchayat are that the member must be able to read and write the State language, must not hold an office of Sarpanch or be a member in the samiti, parishad or State or Union legislature.
 - Nyaya Panchayat has a chairperson and secretary elected by its members; one-third of its members retire every second year.
 - Each Gram Panchayat, which is an elected body, elects members for Nyaya panchayat.
- 9) *Role of Grama Nyayalayas:* The Law Commission of India in its 114th Report on Gram Nyayalaya (1986) suggested establishment of Gram Nyayalayas. They provide speedy, inexpensive and substantial justice to the common man. The Gram Nyayalayas Bill, 2007 was broadly based on the recommendations of the Law Commission which provided for the establishment of Gram Nyayalayas for the purpose of providing access to justice – both civil and criminal – to the citizens at the grassroots level. Grama Nyayalayas will ensure that opportunities for securing justice are not denied to any citizen for reasons of social, economic or other disabilities

and for matters connected therewith. The preamble of the Bill reverberated Article 39A of the Indian Constitution which envisages equal justice and free legal aid to economically backward classes.

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