



LAW COMMISSION OF INDIA

**ONE HUNDRED AND FOURTEENTH
REPORT**

ON

GRAM NYAYALAYA

AUGUST 1986

Shri Ashok Kumar Sen,
Minister for Law and Justice,
Government of India,
Shastri Bhavan,
NEW DELHI.

August 12, 1986

Dear Minister for Law and Justice,

I feel happy to forward the first report of the present Law Commission (One Hundred and Fourteenth Report of the Law Commission) on the topic of 'Alternative Forum for Resolution of Disputes at Grass-roots Level'.

The present Law Commission was set up effective from September 1, 1985. Having regard to its terms of reference, it was resolved by the then members of the Law Commission to give top priority to the question of tackling the mounting arrears in courts. It was a two-pronged drive. One was to introduce a participatory forum of justice within the mandate of the Constitution of India. Another was to examine its impact on the question of backlog and ever increasing arrears in courts.

Browsing through the report, you would be able to find that a comprehensive working paper was issued and a national debate was developed. In the meantime by your letter dated February 17, 1986, you conveyed to the Law Commission the decision of the Government to entrust the work of recommending judicial reforms to the present Law Commission. Comprehensive terms of reference drawn up for the proposed Judicial Reforms Commission was annexed to your letter. The first term of reference in the matter of recommending judicial reforms was to some extent overlapping with the first term of reference of the Law Commission. Therefore, the Commission continued its enquiry, dialogue and deliberation with regard to the working paper issued by it. I have, therefore, great pleasure now in forwarding the report.

There is undoubtedly some delay in preparing and submitting the same. The Law Commission had a tentative working schedule and it was hoped to submit the report by the end of June or latest by the middle of July, 1986. However, as you are aware that I was designated as High Legal/Judicial Authority for identifying and specifying certain areas pursuant to para 7.2 of the Punjab Accord. It was a time-bound programme. Consequently, the schedule of the Law Commission got disturbed by more than a month. This could have been avoided if the Commission had full quota of prescribed membership. Save with the presence of Member Secretary, I am the lone full-time Member. Hence this delay.

I hope that the report will be expeditiously placed before the Parliament and printed and circulated so that effective and expeditious steps can be taken for its implementation.

With regards.

Yours faithfully

Sd/-

D.A. DESAI

Encl : A Report

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CHAPTER I

CONSTITUTION AND TERMS OF REFERENCE OF LAW COMMISSION OF INDIA

1.1. The Eleventh Law Commission was constituted on September 1, 1985 with the following terms of reference :

Terms of reference of Law Commission.

1. To keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times and in particular to secure—
 - (a) elimination of delays, speedy clearance of arrears and reduction in costs so as to secure quick and economical disposal of cases without affecting the cardinal principle that decisions should be just and fair;
 - (b) simplification of procedure to reduce and eliminate technicalities and devices for delay so that it operates not as an end in itself but as a means of achieving justice;
 - (c) improvement of standards of all concerned with the administration of justice.
2. To examine the existing laws in the light of Directive Principles of State Policy and to suggest ways of improvement and reform and also to suggest such legislation as might be necessary to implement the Directive Principles and to attain the objectives set out in the Preamble to the Constitution.
3. To revise the Central Acts of general importance so as to simplify them and to remove anomalies, ambiguities and inequities.
4. To recommend to the Government measures for bringing the statute book up-to-date by repealing obsolete laws and enactments or parts thereof which have outlived their utility.
5. To consider and to convey to the Government its views on any other subject relating to law and judicial administration that may be referred to it.

1.2. Subsequently on February 17, 1986, the work to be assigned to the proposed Judicial Reforms Commission was entrusted to the Law Commission. The terms of reference relevant to judicial reforms on which the Law Commission was invited to work are as under :

Terms of reference of Judicial Reforms Commission.

1. The need for decentralisation of the system of administration of justice by—
 - (i) establishing, extending and strengthening in rural areas the institution of Nyaya Panchayats or other mechanisms for resolving disputes;
 - (ii) setting up of a system of participatory justice with defined jurisdiction and powers in suitable areas and centres;
 - (iii) establishing other tiers or systems within the judicial hierarchy to reduce the volume of work in the Supreme Court and the High Courts.
2. The matters for which Tribunals (excluding services Tribunals) as envisaged in Part XIV-A of the Constitution need to be established expeditiously and various aspects related to their establishment and working.
3. The procedural laws with a view generally to disposing of cases expeditiously, eliminating unnecessary litigation and delays in hearing of cases and reform in procedures and procedural laws and particularly to devising procedures appropriate to the terms envisaged in items 1 (i) and 1(ii).
4. The method of appointment to subordinate courts/subordinate judiciary.
5. The training of judicial officers.
6. The role of the legal profession in strengthening the system of administration of justice.

7. The desirability of formulation of the norms which the Government and the public sector undertakings should follow in the settlement of disputes including a review of the present system for conduct of litigation on behalf of the Government and such undertakings.
8. The cost of litigation with a view to lessening the burden on the litigants.
9. Formation of an All India Judicial Service; and
10. Such other matters as the Commission considers proper or necessary for the purposes aforesaid or as may be referred to it from time to time by the Government.

Constitution and
Composition of
Law Commission.

1.3. The notification constituting the present Law Commission for a period of three years from September 1, 1985 to August 31, 1988 provided that the Eleventh Law Commission shall consist of : (i) Chairman (ii) Three full-time Members (iii) Member-Secretary (iv) Special Secretary Legislative Department, ex-officio Member and (v) Three or more part-time specialised Members depending on the nature of the topic referred to the Commission for study. By the notification dated September 2, 1985, over and above the Chairman, Justice K.N. Goyal of the Allahabad High Court was appointed as a full-time Member. The Member-Secretary and Special Secretary were notified. They belong to permanent service in the Ministry of Law. Later on Mr. Justice K.N. Goyal ceased to be a full-time Member and has become a part-time Member. The post of Special Secretary is abolished. Therefore, the Commission today consists of Chairman and Member Secretary, an officer belonging to Indian Legal Service and a part-time-Member.

Reform in Judi-
cial Administra-
tion.

1.4. Having regard to its first term of reference, namely, 'to keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times', the Commission decided to give highest priority to the question of basic reforms in judicial administration. The present disturbing situation clearly visible to all in the administration of justice will require consideration of numerous structural changes. The Commission identified the rural poor as the victims of the present judicial system and accordingly, drew-up its agenda of work in which the rural poor were assigned the highest priority. The Commission had before it the well researched analysis of the work of the first ten Law Commissions made by Dr. Upendra Baxi in his book 'The Crisis of the Indian Legal System'.¹ The analysis shed light on the working procedure then in vogue and the need to recast the same on the lines suggested in the analysis. It was felt that law reform is not the preserve of a few technocrats working in the office of the Law Commission. It must be a participatory process and the width and range of participation must be cast wide so as to include those who suffered by the colonial legal system which has become wholly stratified. Accordingly, the Commission was of the view that it should have consultation with the widest range of informed public opinion before it finalised its recommendations for various changes in the system. Therefore, it devised a procedure whereby a working paper on its terms of reference should be prepared, translated into Hindi through the good offices of the Official Languages Wing of the Legislative Department. It was also decided to hold numerous discussions, organise seminars and workshops and invite consultations as it could reasonably handle on the draft paper. Invitations were specifically extended to lawyers, practising at grass-roots level, Judges belonging to subordinate judiciary, legal academics and social activists.

Circulation of
working paper.

1.5. The working paper of the Law Commission on the 'Alternative Forum for Resolution of Disputes at Grass-roots Level' was circulated to various bodies and persons to elicit their views and comments thereon. Its English text as it was circulated, appears in Appendix I to this Report. The working paper was translated in Hindi by the Official Languages Wing and a voluntary organisation also produced its translation in Tamil. A copy of the working paper prepared by the Commission was sent to the Chief Justice and Judges of the Supreme Court, Chief Justices and Judges of the High Courts, Chairman of the Bar Council of each State and Bar Council of India and leading advocates, editors of the leading daily newspapers etc. Initially, the last date for the receipt of views and comments was kept on December 1, 1985 but on public demand, it was extended upto March 31, 1986.

¹(1982) Ch, 9, pp. 244 to 294.

1.6. The Commission launched a nation-wide debate on the subject by meeting a well attended Press Conference on December 27, 1985 with a request that a wide coverage may be given to the proposals of the Law Commission so that the message could reach to as many people as possible. The Press responded enthusiastically and an extensive coverage was given to the proposals of the Law Commission in national dailies and language newspapers. A good coverage of the proposals was transmitted through Doordarshan and Akashvani also. Keeping in view the importance of the subject and for an indepth study of the matter, the Commission held in collaboration with Law Faculties, Legal bodies, social organisations, Judges and Advocates, academics, social activists, seven workshops at Delhi (Union territory), Salem (Tamil Nadu), Jaipur (Rajasthan), Varanasi (Uttar Pradesh), Ranchi (Bihar), Calcutta (West Bengal), and Indore (Madhya Pradesh). With a view to establishing a rapport with the people in remote villages, we paid visits to villages, one to a tribal village inhabited by members of Munda tribe and another to a village near Varanasi where Panchayat members and other elders of eight nearby villages assembled. Persons from all walks of life were invited to participate in the workshops. Response to the Commission's proposal has been varied and extensive. A truly national debate developed.

Nation-wide
debate.

CHAPTER II

THE OVERALL APPROACH OF THE ELEVENTH LAW COMMISSION

Public impression on implementation. 2.1. There exists a dominant public impression that the Law Commission's reports are usually not implemented. From time to time, the national dailies have carried, over the last decade or so, features entitled "Reports That Never Get Off Paper" or "Law Commission's Reports Gather Dust". That such an image should persist is a sad reflection on the image and status of law reform in India. Compared with this, the Law Commissions in other Commonwealth countries, for example, enjoy a unique public standing and enviable attention from the government.

Real position. 2.2. The Eleventh Law Commission is aware that this public image is, as all images, not based wholly on facts. As the analysis offered by Dr. Upendra Baxi reveals that of the first fifty-nine reports of the Indian Law Commission, at least twenty were legislatively implemented and four were partially implemented. On the other hand, Dr. Baxi has also been able to highlight the fact that while six reports were filed or rejected, as many as eighteen were yet awaiting implementation, eleven were still awaiting publication.¹

Status position. 2.3. Dr. Baxi has pointed out the many "puzzles" in arriving at any quantitative or qualitative understanding of the implementation process. But we accept the legitimacy of the criticism levelled by him that it is "not possible..... to lay all the blame on the Government for the 'state of implementation' of the Law Commission of India reports".² We agree that the Law Commission's own "lack of concern for its effectiveness may have been a major factor for the present state of affair."³ The Eleventh Law Commission has, accordingly, decided to prepare an authoritative status paper on the process of implementation of the Commission's reports thus far.

General approach to Law Reform. 2.4. Dr. Baxi has also drawn compelling attention to the fact that the successive Commissions have failed to formulate a general approach to the task of law revision and reform. Surely, a national law reform body must have a policy perspective on the nature and state of law revision and reform in India. The Commission intends, as a part of its work, to propose for national debate the entire question of perspectives, methods, processes and goals of law reform in a traumatically changeful contemporary Indian society. The Commission may even venture to express the hope that its formulations in this regard may eventually pave the way for a national statement, by way of Parliamentary resolution, on law reform and law revision policy.

Approach of the Present Law Commission. 2.5. As the next Chapter illustrates in detail, the Eleventh Law Commission has already taken into account, rather fully, the constructive advice on law reform processes and tasks offered by Dr. Baxi. But in this chapter we consider it necessary to broadly outline the approach that the Eleventh Law Commission proposes, generally, to adopt.

First, this Commission feels it necessary to state that law reform and revision to be fully informed by the constitutional perspectives emanating from the Preamble, Fundamental Rights and Duties, and the Directive Principles of State Policy enshrined in the Constitution of India. Article 39-A provides a succinct charter of law reforms for India. Our present Report identifies how this article can provide fresh points of departure, and of arrival, in the process of conceiving law reforms and, hopefully, in the process of the implementation of law reform proposals by the Government.

Second, the Commission believes that legal order is an inestimable resource for national development, the unity and intergrity of the Nation, and for the pursuit of the lofty ideals enunciated by the Preamble of the Constitution of India.

¹See U. Baxi, *The Crisis of the Indian Legal System* (1982) pp. 276-285.

²*Id.* at 284.

³See U. Baxi, *The Crisis of the Indian Legal System* (1982) pp. 284.

Cynicism concerning the nature and future of law and the capabilities of the law, its processes and institutions in protecting and promoting these values is we think, constitutionally forbidden. Every act of purposeful law reform must be regarded as an act of investment in the regime of constitutional democracy.

Third, the preamble recital of a "socialist, secular, democratic, republican" India created by the Constitution, necessarily implies that law reform must be a participatory affair. All affected interests must be adequately consulted. Law reform, as Dr. Baxi has reminded us, must not be conceived merely as a sectoral affair involving merely the reform of the lawyer's law.¹ Laws affect people and it is people whom we must consult in the law reform process. And people include more categories than lawyers, judges and administrators, indispensable and valuable though their participation is, the consumers of law, its beneficiaries, as well as the victims of the administration of laws and justice must have a voice, a say in the process of the formulations of the law reform proposals. In one word, such proposals must be formulated with the widest possible participation. Law reform must be a truly participatory process.

Fourth, this Commission believes that simultaneously with reform of substantive and procedural laws, its task, constitutionally conceived, requires it to formulate changes in the institutions of the law as well. Normative revolutions without corresponding institutional renovation create merely 'symbolic' reform exercises and earn, through unfulfilled expectations, for the processes and institutions of law reform a just measure of cynicism and contempt in course of time. This, in turn, rubs off to the symbolism of the law itself creating exorbitant social costs — including disrespect for the law — which a developing nation like ours simply cannot afford.

Fifth, and for the same reason, the Commission would like to urge the Government of India, and parliament, to evolve time-bound procedures for consideration of the Commission's reform proposals. This would include a prompt publication and dissemination of its reports and a set of time-bound procedure for inter-ministerial consultations.

Sixth, as its further contribution to the elaboration of these procedures, the Commission declares its willingness to associate itself with the process of ministerial and inter-ministerial considerations, communication of the Commission's points of view, beyond the printed word, to the ministries responsible for responding to its proposals is vital to the process of law reform. This procedure should not merely help expedition but also assist a wider dialogue within the Government for the maturation of the law reform processes and proposals. As a related aspect, the Commission itself will, in the process of formulation of the proposals, seek consultation with the Governments of the States and Union territories and law reform commissions, and other related centres of decision-making across the country.

Seventh, law reform, conceived as a process of systemic change, will require some degree of co-ordination in the future. While it is true that the Commission can never, even when its present meagre resources are astronomically increased, become an exclusive body for preparing law reform proposals, there is need to accord some consultative status to the Commission when other law reform committees are set up by various Ministries, especially when these involve *structural changes* in the legal system. Such a consultative status will ensure that the best advice of the Commission is available to other law reform committees, mostly task-bound and *ad hoc* in nature. It will also provide to the Commission sources of learning and experience in diverse areas, which ultimately are related to the structural renovation of the Indian Legal System. We urge the Government to consider this suggestion with the urgency and seriousness it so obviously merits. The Commission must gracefully acknowledge the beginning made in this direction when Reports of Justice Mulla Committee on Jail Reforms has been forwarded to it for comments, analysis and method of implementation.

Finally, (without being exhaustive) since all changes affecting legal system involve outlays of expenditure, it will be necessary for the Commission to always prepare a first draft, as it were, of the magnitude of the investment needed. The Commission, naturally, hopes to receive the fullest co-operation of the Ministry of Finance by way of advice in this connection. By the same token, law reform should be viewed as a dynamic component of planning. There is need for according some consultative status to the Commission both in the Planning and the Finance Commission.

¹See U. Baxi, *The Crisis of the Indian Legal System*, (1982), pp. 255-259.

Wider role for Law
Commission.

2.6. In the foregoing, we have indicated our conception of the process of dynamic and feasible law reform. The Commission has to cease to remain an eclectic appendage of the Government if it is to perform its mission of assisting in the restructuring of the Indian Legal System. In order to play its full role in the tasks of using law as a means of national development and the unity and integrity of India, it must necessarily not merely initiate the process of law reform but also coordinate the consideration of the law reform proposals. The participatory character of law reform, as conceived by us, includes not just the crucial task of gathering of views on law reform proposals from the people. It also includes continuing participation within the government for a fuller realisation of the potential for law reform towards the constitutional goals and continuing reinforcement of these goals.

CHAPTER III

APPROACH DISCLOSED IN THE WORKING PAPER

3.1. Unmanageable backlog of cases, mounting arrears and inordinate delay in disposal of cases in courts at all levels—lowest to the highest—coupled with exorbitant expenses—have attracted the attention of not only the members of the Bar, consumers of justice (litigants), social activist, legal academics and Parliament but also the managers of the courts. The Chief Justice of India has gone on record saying that the 'justice system as in vogue in this country is about to collapse'. The disturbing situation so disclosed attracts attention of anyone concerned with law reform. Numerous suggestions have been made by the earlier Law Commissions for introducing radical reforms in the system of administration of justice. The sole governing consideration till then was how to reduce the delay in disposal of cases, make the system resilient by removing its stratification, making the system less formal and truly inexpensive i.e. to bring it within the reach of the poor. The Fourteenth, Fifty-fourth, Seventy-seventh and Seventy-ninth amongst other reports of the Law Commission, recommending numerous changes keeping the system in its basic frame-work intact were directed towards peripheral changes. The fall-out of these changes, we observe with regret, has been further deterioration in the efficacy of the system. The law Commission accordingly, decided to approach the matter from a hitherto unexplored end.

Past attempts for reform.

3.2. Both the law making and the judicial administration since the British days were non-participatory in character and continues to retain that feature till today. 'Participation by broad masses of people, or even by the interests immediately affected by it, in the process of the making and implementation of laws was virtually unknown; unless of course, we regard protest and disobedience as forms of group participation in law making.'¹ The new approach must strike at the root of this non-participatory method. While retaining the acceptable features of the present system, the working paper focussed its attention on inter-linking it with participatory model which may help in deprofessionalisation of the administration of justice. Participation was to be invited in the process of recommending law reforms and participation may be advisedly introduced in the administration of justice. These were the twin objectives in formulating draft proposals in the working paper. History, it is said always sheds light on the future action to be taken and provides a feedback. The historical perspective was extensively examined in the Working Paper and the inevitable conclusion that emerged therefrom was that tinkering with the system at its fringes was foredoomed to failure. It is self-evident that litigiousness could not be reduced by merely tinkering with procedures of regular courts of law. What has become necessary is a new institutional forum stripped of technicalities and the procedural rituals of the regular courts. The non-participatory British model of administration of justice alienated the people from the system because of its foreign origin, technicality, extreme formalism, rigid rules of procedure and relevance and foreign language. It has till today remained an alien system which has no living contact with the masses and is not meaningful to them.² The historical perspective shaped the thinking of the Commission and an attempt was made in the draft proposals to structure administration of justice on participatory model.

Participatory justice.

3.3. Once a tentative decision was taken to model judicial administration on participatory basis, it had to be decided at what level it should be introduced. Judicial administration in this country is hierarchical in character. There is a court variously named as Munsif/Civil Judge (Jr. Division) at the grass-roots level. It is subordinate to the court at the District level styled as Court of District and Sessions Judge which in turn is subordinate to the High Court at the apex of the State Judiciary. The Supreme Court has appellate jurisdiction over the decisions of the High Court.

Justice at Grass-roots level.

¹U. Baxi, *The Crisis of the Indian Legal System*, (1982), pp. 44-45.

²Report of the *Legal Aid Committee*, (Govt. of Gujarat, 1971), para 13.12, p. 209.

Any structure pyramidic in character must have strong foundation and, therefore, the draft proposals centered upon restructuring the foundation. Accordingly, a forum for resolution of disputes emanating from rural areas and participatory in character was received. In reaching this tentative conclusion, the Commission took notice of the obvious fact that while the system of administration of justice in our country is one integrated whole, it ignores or overlooks the wide social and cultural divides between the rural population, urban population and the metropolitan elite. This approach ignores the vital fact that the nature of disputes arising in rural areas is wholly dissimilar from those in metropolitan areas and both required an altogether different model for resolution of the same. Commercial and mercantile litigation, enforcement of corporate laws, foreign exchange regulations, monopolies and restrictive trade practices and complex constitutional issues figure in the litigation in metropolitan areas. Labour disputes dominate the courts in industrialised cities and towns. The disputes that arise in rural areas are largely related to ownership and possession of agricultural land, problems of cultivation, boundary disputes, land records, petty family and property disputes. Ignoring the stark difference between the nature of disputes, the present system requires complex voluminous procedural laws for the dispensation of justice at both the levels. This realisation dictated the approach of the Commission to devise a different kind of forum for resolution of disputes at grass-roots level. The nature of the dispute must determine the procedure and the forum for its resolution. Prior to the introduction of the imperial courts' structure, socialisation on finding as well as the disputed issues, resolved with the appearance of a third party, and usually the third party was a respectable member of the same community.

One more realisation shaped the approach of the Commission. A popular though *unwarranted belief* generated and fed by the legal profession has been that no one is capable of rendering of dispensing justice unless he is trained in law. To support this unsustainable proposition it is oft-repeated that justice must be done according to law. It is not suggested that to render justice one must violate the law, but knowledge of law is not an essential pre-requisite for rendering justice. 'An interesting point that has been noticed by number of scholars in the sociology of law is that the differentiation of legal dispute and the slight shift from the traditional court procedures is related to the increased requirement for non-legal specialised knowledge in order to read the judgement. Wolfgang Friedmann stressed that most of the members of Government Committees, administrative organisations and special courts are non-legal experts.⁽¹⁾ Similarly, an arbitrator selected by the parties can decide and disposal of any dispute irrespective of the fact whether he was equipped in law. If law is commonsense then its development does not necessarily and wholly depend upon the knowledge of lawyers law or statutory law. The Commission, therefore, adopted the approach that rendering justice is not the preserve of legally trained mind. In rendering justice knowledge of local culture, traditions of the society, behavioral pattern and commonsense approach are primary and relevant considerations. More the administration of justice became characterised by the application of law, a view developed that too much legalistic approach hinders justice. Knowledge of local interest and local customs must be allowed to continue to operate and taken note of in dispensation of justice. The Commission also accepts the notions of the juristic talents of Indian people embodied in various systems of what has been termed as "peoples law".⁽²⁾ All these considerations shaped the approach of the Commission in devising a participatory forum for resolution of disputes at grass-roots level.

New Forum.

3.4. The prejudice that the Nyaya Panchayats composed of elected representatives suffered at the hands of the elite and the superior courts cannot be wished away. The growth of Nyaya Panchayat was thwarted by the superior courts, but could not subscribe to the view that a lay person not trained in technicalities of laws is capable of resolving disputes and rendering justice. The question then arose : whether an attempt should be made to unify both the points of view. The approach of the Commission was that in order to ward off the fate that Nyaya Panchayat suffered, a synthesis must be made by providing the composition of the forum consisting of a legally trained Judge and two lay Judges. This system is in vogue in numerous countries, a notice of which has been taken in the working paper.

¹Kalman Kulscar, *Peoples Assessors in the courts*, (1982), p. 24.

²See U. Baxi, *The Crisis of the Indian Legal System* (1982), Ch. II, p. 328.

After tentatively defining the composition of the new forum, the Commission approached the question of jurisdiction to be conferred on this forum. In order to be realistic, the Commission proceeded to collect information about the institution of the cases and the nature of disputes coming before the grass-roots level courts at present. The Commission also enquired the nature of disputes coming before the revenue authorities. The analysis of the cases instituted within a given period revealed the nature of disputes coming before the court at the lowest level. From this examination, the Commission worked out various heads of disputes which largely emanate in rural areas. The approach of the Commission was that simple and uncomplicated disputes which can be resolved in a short time should be entrusted to the new forum. The nature of disputes thus would show that the participation of local population would contribute greater towards their expeditious disposal. That approach was accordingly adopted.

3.5. It was not easy for the Commission to devise the method of selection of lay Judges. There are two known view points in this behalf, election v. selection. Various statutes in operation in various States dealing with Nyaya Panchayats have provided for election of members of Nyaya Panchayats either directly by the village community or indirectly by the elected members of the Nyaya Panchayat. The Commission was not unaware of the fact the the system of election has comparative advantages and disadvantages. Undoubtedly, the country elects its political managers. Political justice of 'one man one vote' has considerably politicised even the rural community. One may elect a representative to the Assembly or the Parliament and he would operate from a distance, but if one has to elect Judges in a Small politicised village community, the disadvantages would for outweigh advantages of elective system. The Commission in order to establish that justice must not only be done but must seem to be done opted in favour of selected/nominated lay judges.

3.6. Once nomination was tentatively decided as the method of selecting lay Judges, an authority had to be devised on whom power had to be conferred to select the Panel of Judges. If power is conferred upon an exclusive executive authority to draw up the panel, there was likelihood of overt interference of executive in the selection of judges. If, on the other hand, an exclusive judicial forum was to select members of the panel, difficulty will be experienced in finding out reputable social workers who could be trusted to become lay judges. Judicial fora, by the very nature of their duties, keep away from mass contact. Their sources for information about genuine, honest, social workers would be very limited. The executive, with its vast network of officers right upto the village level and in view of its mass contact would be able to spot persons in rural areas who could be trusted to be judges. The working paper, therefore, devised a compromise by providing an interaction between the executive and the judiciary in devising the panel. Accordingly, a suggestion was put forth in the working paper that the District Magistrate of the District and the District and Sessions Judge would both form a committee to devise a panel. To exclude any extraneous interference, a further safeguard was introduced in the form of supervision of the Chief Justice in the matter of drawing up of the panel. It was proposed that after the agreed panel, with recommendations, is submitted to the Chief Justice of the State High Court, he, with the assistance of two of his colleagues, would finalise the panel. The approach in the working paper was to exclude extraneous and irrelevant considerations in preparing the panel of lay judges so that the panelists would inspire confidence of the village community.

3.7. Once participatory model was accepted as the starting point of discussion, the composition of the forum had to be devised with such care that it inspires the confidence of the consumers of justice. Rejecting a purely elected body and simultaneously rejecting a purely State-nominated judge, the Commission devised a forum composed of a legally trained mind to be designated as Panchayati Raj Judge who would preside over the forum consisting of himself and two lay judges to be selected by him from the panel drawn up for the purpose. The three would constitute the new participatory forum. In devising such a forum, the Commission had in view the mandate of article 39A of the Constitution as also the Directive Principles of State Policy. Such a forum would be free from the orchestrated atmosphere of the present day courts; theirs would be an informal approach and the attempt would be to resolve the dispute by consensus. It would have the advantage of what is known as justice by one's own peers. The working paper accordingly suggested a sort of a village court consisting of a judge drawn from the State cadre of judges to be set up for the special purpose, called the Panchayati Raj Judges, and two lay judges. Its advantage, according to the Commission in the working

paper, was that the legally trained judge would assist the lay judges in application of law and the two lay judges would bring their commonsense approach, formed and guided by the local traditions and culture, and the behavioural pattern of the village community in resolving the disputes.

3.8. The Fifty-fourth Report of the Law Commission exhaustively examined the Code of Civil Procedure, 1908, with a view not only to streamlining the procedure but to make it less formal, more simple and conducive to expeditious disposal of cases and controversies coming before the court. The Seventy-seventh Report also made certain suggestions in this direction for reducing the delay in trial of suits before the trial courts and marginalise the arrears. Pursuant to these Reports, certain amendments were carried out. The Commission was interested in ascertaining the impact of these amendments. The statistical information furnished to the Commission revealed that instead of improving, the situation had considerably deteriorated and the pendency, since the reports, had practically doubled. In para 2.3 of the working paper, the figures have been set out. The Commission was aware of a possible pitfall in that merely devising a participatory forum by itself would not effectively tackle the problem if it is burdened with the same procedure in dealing with the disputes coming before it. Processual justice, in the opinion of the Commission, has overtaken substantial justice. Numerous decisions rendered by the High Courts and the Supreme Court on the provisions of the Code of Civil Procedure would bear out this statement. Therefore, the Commission suggested that the Code of Civil Procedure, 1908, and the more cumbersome Indian Evidence Act, 1872, will not apply to the proceedings before the participatory forum. The Commission, accordingly, proposed that a very simple procedure which permits a decision to be reached expeditiously and effectively, informed by justice, equity and good conscience would govern the proceedings before the new forum.

3.9. If litigants can be appropriately described as consumers of justice and the court system is devised to render service to such consumers on payment of fee for the service in the form of court fees, it is implicit therein that the service must be within the easy reach of the consumers of service. If consumerism approach appears crude in relation to the noble task of rendering justice, it can be said that in this age of the common man, justice must be taken to the doorstep of the people, people in search of justice at present have to go to the courts wherever they are established. Often times, people have to travel long distance to have access to justice. It is shown to be time consuming, expensive and even occasionally unproductive. It is implicit in the setting up of the new forum that it would not only be easily accessible but that it would try to assemble at the place of dispute or near the subject matter of dispute. Accordingly, it should have easy mobility. Towards that end, a transport vehicle must be provided so that this new forum can speedily travel to the place of dispute, carry justice to the doorstep of the people and dispose of the matter on the spot. Transport.

3.10. A decision of a court or a body set up to adjudicate the dispute by itself has hardly any relevance to the person who complains of a justice having been done to him. After the decision is arrived at, the benefit granted by the decision must be translated into action. Execution of the judgments and decrees of the courts have been a fruitful source of further and more expensive litigation. The Commission was aware of the observation of the First Law Commission in its Fourteenth Report that "inordinate delays would frequently occur at various stages of the progress of an execution application."¹ The First Law Commission accordingly made certain recommendations to expedite disposal of execution proceedings, however, retaining Order 21 of the Code of Civil Procedure almost intact. The Eighth Law Commission in its Seventy-seventh Report, dealt with the problem of execution. Briefly it observed that "the courts do not devote as much attention to execution cases as they do to regular suits for the reason that the disposal of an execution case does not add to the unit of cases disposed of by the courts."² Some other marginal amendments were suggested. While the disease is diagnosed, the remedies have proved to be ineffective. The problem is thus further accentuated. The Commission accordingly invited debate by proposing that the orders of the proposed new forum shall, wherever permissible, be executed forthwith on the spot. As an illustration it was suggested that if the dispute was with Execution of the orders of forum.

¹LCI Fourteenth, Report, Vol. I, Ch. XVIII, para 8, page 435.

²LCI Seventy-seventh Report, Ch. IX, para 11.3, page 39.

regard to a right of way or a water channel or disturbances to easement of air and light, the decision must be implemented by removing the obstacles and translate the benefit given by the decision into action. And on the spot disposal which the Commission proposed, is likely to have lasting effect than a protracted court proceedings.

3.11. Lastly, the question which engaged the attention of the Commission while drawing up the working paper was the limits of jurisdiction to be conferred on the new forum. The area of civil jurisdiction to be conferred on the forum did not present a very serious problem. The Commission collected statistical information from some Taluka level courts about the institution and disposal of cases and the nature of disputes brought before such courts for resolution. A common feature which appeared at that level was that the disputes emanating from rural areas centred round agricultural land, right of cultivate, tenancies, possession, boundary disputes, records in respect of cultivation, right to take water from a channel or tubewell and incidental questions arising under the various agrarian reforms Acts. The information also revealed that there were petty disputes relating to marriage, customary divorces, maintenance, custody of children and partition of ancestral property. There were some disputes with regard to possession of farm houses, courtyards and right to graze cattle in common pastures. This information was of a revealing nature and accordingly the Commission tentatively proposed area of jurisdiction on the matter of civil disputes under various heads as set out in para 2.7 of the working paper. Jurisdiction (Civil).

3.12. The problem of criminal jurisdiction presented some difficulty. Past experience showed that Law Commissions and committees dealing with Panchayat Raj Administration were reluctant in conferring extensive criminal jurisdiction on these village level tribunals. This Commission wanted to make a noticeable departure in this behalf because the proposed new forum was to include a legally trained Judge on whom, in the State cadre, the powers of a Judicial Magistrate First Class could be conferred without controversy. If such a trained person is to preside over the new forum, it would be grossly impertinent not to confer extensive criminal jurisdiction on such a body. The commission was, therefore, tentatively of the opinion that the new forum will have jurisdiction to try all criminal cases which are presently tried by a Judicial Magistrate of the First Class. Jurisdiction (Criminal).

3.13. The Commission invited debate on the question whether the Civil jurisdiction can be further enlarged to include disputes having a flavour of denial of social justice, such as, non-payment of minimum wages, denial of the benefit of agrarian reform laws, etc. Jurisdiction (Miscellaneous).

3.14. The Law Commission having set up its tentative formulations in a broad working paper invited a national debate on all the issues raised. It was also suggested that it would be open to everyone interested in the matter of judicial reforms to raise a debate on the subjects analogous to, or allied to, those set out in the working paper. The Commission records with satisfaction that a truly national debate developed. Extent of Debate.

CHAPTER IV

GENERAL FEATURES OF RESPONSE ON THE WORKING PAPER

Views of State Governments. 4.1. The establishment of courts subordinate to a High Court is constitutionally required to be undertaken by the State Governments (Articles 233-236 and Entry 65 in State List). Accordingly the, working paper was specifically circulated to all the State Governments for eliciting the views and comments thereon. In all, fourteen States have responded to the paper. The State Government of Madhya Pradesh, while generally concurring with the proposals, felt that the system when introduced may entail appointment of large number of judges and as such it would involve enormous financial requirement. On this premise, they expressed their inability to adopt the system due to financial constraints. The then Minister of State for Law in the State of Rajasthan, while extending full support to the proposals, forwarded number of suggestions to make the system more effective. The State Government of Orissa welcomed the proposal but voiced an apprehension that it might be difficult to find suitably trained judicial officers to hold the type of courts envisaged in the proposal. The State Governments of Punjab and Haryana while welcoming the proposal cautioned that the jurisdiction of Nyaya Panchayats should be such that there is minimum possible risk of party politics contaminating the decision of cases. The State Governments of Bihar, Kerala and Jammu & Kashmir supported the proposal. States like Karnataka and Maharashtra did withhold their support. A majority of States expressed broad agreement with the change envisaged in the working paper. However, Governments of certain States and Union territories like the State of Meghalaya and the Union territory of Arunachal Pradesh, where indigenous judicial system is in vogue for the tribal people, were of the view that the existing system should not be disturbed as they not only effectively dispense justice but the system is inexpensive and speedily available at the door-step of the tribals. Let it be clearly understood that where the system of judicial administration at village level is quick, inexpensive and easily accessible, it must not be disturbed. However, as and when they would like to get into the national mainstream, then the question of adopting the forum which is herein recommended must be adopted.

Workshops. 4.2. The workshops organised by the Commission attracted a broad spectrum of intelligentsia interested in legal judicial system. Judges of the Supreme Court and High Courts, Judges of the Subordinate Judiciary and Members of the Tribunals, Advocates, academics, social activists, votaries of public interest litigation, officials manning the Law and Justice Department of the Governments and consumers of justice participated and enriched the debate. There was a broad consensus with the proposals set out in the working paper. There was near unanimity on the question that the present justice system has not only outlived its utility but, in fact, has become counter productive. Divergence in views appeared not on the requirements of change but the scope, volume, direction and degree of change. Votaries of status quo, while conceding that the justice system has become stratified, advocated peripheral changes. This ignores the past experience. Some centrists were of the opinion that the system which is in vogue over a century should be given a further lease of life and to make it resilient, they suggested such inputs as additional manpower and modern electronic gadgets.

On behalf of the Law Commission, after explaining the salient features of the proposals, the debate was listened to with rapt attention so that any suggestion worth considering may not escape its notice. Whenever, necessary the Commission intervened in the debate. When more clarifications were offered, those who came with reservations were ready to reconsider their views and finally a broad consensus emerged. A free and uninhibited democratic discussion was bound to throw-up hardcore negativists. While they advocated hands off from the present system, they were unable to explain its present tragic position and how to make it resilient and effective. No suggestion in that behalf worth-considering was put forth. An analysis of the views expressed by participants revealed a broad

consensus in favour of the proposals. Speakers representing social service institutions desired some changes in certain proposals while concurring with the suggestion of introducing a new forum for resolution of disputes. They were activists in the field of legal aid movement, social service and Lok Adalats. Their reservations were on the question of qualifications for panelists, method of election versus selection and the authority to draw up a panel of lay Judges.

There were votaries of the retention of the present Code of Civil Procedure with some further changes to be introduced in the same. They were of the opinion that substantial justice can only be rendered by following a detailed prescribed procedure.

Some participants coming from rural areas had genuine apprehension about the lay Judges remaining judicially independent while participating in decision making process. Their apprehension was that the village life has so much been politicised that it is impossible to come across any 'social animal, who is a political'. Add to it, according to them the factious village atmosphere disloving divisive tendencies along caste, class and religious denomination and, therefore, it would be impossible to find honest, socially-oriented village people who can be trusted for rendering even handed justice. While appreciating that knowledge of law is not a *sine qua non* for dispensing justice, they voiced their reservation on the question whether a society governed by rule of law can have judicial administration not manned by legally trained persons. They were disconcerted by the fact that in a caste dominated bureaucracy, the system of selection of lay Judges would effectively exclude persons belonging to Scheduled Castes, Scheduled Tribes, minorities and women, who must find representation in administration of justice.

These difficulties cannot be dismissed as being without merits. All safeguards have to be devised to protect against such vicissitudes that the new forum may face.

4.3. Before dealing with the apprehensions voiced herein, a minor point raised by certain State Governments may be disposed of first. Some State Governments apprehended that the proposed system of administration of justice is likely to cast a heavy financial burden on the State exchequer and it is beyond their means to provide necessary finance for effectively implementing the proposal. The Commission sees no merit in this apprehension. It is the fundamental obligation of every centralised governmental administration to provide for mechanism for resolution of disputes arising within their jurisdiction. No civilised government can escape this responsibility. No government can afford to have their citizens perpetually engaged in finding solutions to their disputes by an unending process which may be simultaneously costly and open-ended. This fundamental duty cannot be disowned under the pretext of non-availability of requisite finance. While the Commission is not satisfied that the proposed change would involve a heavy financial burden, it is of the opinion that outlay on taking justice to the door-step of the people is development expenditure. The approach till today to treat it as a non-development expenditure, enquires reconsideration.

Again the States do levy court fees. It is a tax on the administration of justice. It is not the purpose of the Law Commission to examine the various nuances of the levy of the court fees. The Commission, for the present, accepts it as a necessary evil. A Committee of the Law Ministers on rationalisation of court fees collected the statistics of expenditure on the administration of justice. For the year 1981-82, the total expenditure of 22 States was Rs.112.71 crores and surely their collection of court fees was in excess of the same. This was also the view of the Gujarat High Court when it pointed out that the amount collected by court fees is always higher than the expenses on the administration of justice. The Commission is, therefore, not impressed by this submission of financial constraints because administration of justice is a social overhead in a developing society. However, one need not go that far as pointed out earlier, it pays for itself.

Additional expenditure, if any, has to be set off against the benefit conferred by the proposed new system. Cost benefit structure is a related phenomenon. The increased expenditure, if any, on account of a transport vehicle to be provided to the Presiding Judge visiting villages to dispose of disputes on the spot and allowances that may have to be paid to lay Judges, should be set off against the benefit to the litigant, who at present is required to take numerous journeys to the seat of the court as also the expenses to be incurred by him on lodging, boarding and transport of the witnesses whom he is required to take to the court on numerous occasions. In one of the workshops, a litigant from village Tapakara near Ranchi, Bihar

Financial constraints.

State, vividly described his experience about his quest of justice since 1969. He expressed his apprehension whether the case would be disposed of in his lifetime. It was a petty dispute which should have been disposed of at the site in a short time. He stated that he has already spent Rs.10,000/- in search of justice. He pointed out that on numerous occasions, he had to take his witnesses to the court by spending on transport and providing meals to the witnesses which used to cost him on an average per witness Rs.20/- per adjournment. He frankly stated that to protect against the witnesses being bought over, he had to pay something to grease the palm of the witnesses in the form of sweet packets. The man hours lost appeared to be nobody's concern. The case was an eye-opener.

Difficulties
of litigants.

of 4.4. A litigant in search of justice since 1972 enriched his tale of woes at the workshop held in Banaras University at Varanasi. According to him, on an average, there is a floating population of 50,000 litigants including witnesses, who visit Varanasi District Court Compound daily. According to him, the average cost of transport plus snacks works out Rs. 10/- per day per individual. The longest distance one has to travel to reach court at Varanasi measures about 58 Kms. Most of the places in the hinterland within the jurisdiction of District Court at Varanasi are not connected by railway with Varanasi. Bus transport apart from being hazardous is very uncomfortable and tedious. One is required to travel on an average 2½ to 3 hours one way. It does not require a genius to calculate this wasteful expenditure on what is euphemistically called search for justice, but shown of embellishment it must be described as resolution of one's legitimate disputes. Cost benefit structure must take within its compass not only the State expenditure on establishment and maintenance of courts but the cost incurred by litigants on travel, food and sundry expenses for access to courts. Comparatively speaking, instead of numerous litigants and witnesses travelling to the seat of court, the court, namely the presiding Judge and two lay Judges and one or two staff members, all can travel in a jeep to be provided by the State. Some allowances to these persons would have to be provided. But the litigants will save all expenses on travel, transport, food, expenses for witnesses and will simultaneously save loss of man days. Taking a very modest view of the matter, the Commission is of the view that there would be both qualitative and quantitative benefit by ushering in the model recommended herein.

CHAPTER V
EXAMINATION AND ANALYSIS OF CRITICAL DISCUSSION ON
CERTAIN DRAFT PROPOSALS

5.1. If the historical perspective and past experiences are not to be ignored because of an articulated reverence generated for the existing system of judicial administration by some vocal elements, it becomes a compelling necessity to give up any effort at introducing peripheral changes, an exercise repeatedly undertaken in the past. Any amount of legitimisation of the present system would not hide its utter and almost irremedial failure. All the previous attempts and their fall-outs have been succinctly set out in the working paper. Every possible attempt to reform and revitalise the system not only failed to yield the desired results, but, in fact, aggravated the situation. To chalk out a new path became a compelling necessity.

Choice and policy decision.

Every organised society, primitive, tribal or clan, is likely to generate disputes. Consequently, every such society must evolve a forum for resolution of such disputes. Prior to the imposed imperial court structure, socialisation of finding solutions to disputed issues, began with appearance of a "third party"¹. The organisation of the village as a social and political unit finds reference in vedic literature. Village assembly with local headman provided forum for resolution of disputes. People participated in the administration of justice. During colonial rule State courts exclusively took over the function of resolution of disputes.

5.2. While visualising the possible direction in which the reform of the system must move, the prior experience and the experimentation must be duly evaluated and a lesson be drawn from it. The stark reality that emerges from the historical evaluation of the past attempts and the experience thus gained is that the tinkering with the system at the fringes would be of no avail. On the contrary, it is likely to add to the malaise. The true test to measure the effectiveness of a change sought to be introduced must be the pains and gains of an average citizen, the consumer of justice. The harsh *albeit* unpalatable outcome of all attempts made so far to improve the system must provide an art lesson in that if simplest and non-complicated dispute between rural people is sought to be dealt with by the present system keeping structural part intact, the effort is bound to go down the drain. It would in no way make the system resilient, effective and responsive to the felt needs of the times. The inescapable conclusion thus is that a basic structural change in the mode, method and forum for resolution of specified types of disputes is a *sine qua non* before the system is engulfed by its own debris.

Evaluation of past experience.

5.3. It would be unwise to look at the problem from the point of view of court management only. In other words, it would be very imprecise to examine the matter from the aspect of ever-growing court dockets. Such an endeavour has to be guided by the aspirations proclaimed in the Constitution of India. Article 39A of the Constitution of India directs the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This is the constitutional imperative. Denial of justice on the ground of economic and other disabilities is in nutshell referred to what has been known as problematic access to law. The Constitution now commands us to remove impediments to access to justice in a systematic manner. All agencies of the Government are now under a fundamental obligation to enhance access to justice. Article 40 which directs the State to take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government, has to be appreciated afresh in the light of the mandate of the new article 39A.

Problem to be examined in the light of Directive Principles. Renovation of the system imperative.

5.4. How does one develop an approach to access to justice contemplated by article 39A? Hitherto, as we will shortly note in our discussion of the organisation of Nyaya Panchayat (by whatever name called), the dominant consideration has been to ameliorate the burden on the court-system, not so much to prevent denial of justice to any citizen by reason of economic or other disabilities. The command of article 39A now is to focus on these disabilities and to develop schemes for their removal. The managerial consideration of ameliorating the burdens on court-system through creation of local fora for dispute settlement can not predominate any longer.

Shift in the emphasis on the burden of the court system to denial of justice to the citizen as a result of article 39A.

¹. Kalman Kulscar, *Peoples Assessors in the courts; A study on the Sociology of Law*, (1982) p. 17.

Disabilities in the Indian legal system.

5.5. The 'other disabilities' referred to in article 39A, distinct from the economic disabilities, are assuredly difficulties posed by the existing profiles of the Indian Legal System. This system, as has already been pointed out, itself imposes disabilities on people in their quest for justice. The disabilities arise because of lack of sustable local fora for dispute handling and an emphasis on professionalised justice. The renovation of the system, now contemplated by the Constitution, requires us to remove these disabilities. The professionalised model of justicing cannot be extended to Bharat, not merely because India has over 2,50,000 lawyers only but also because bulk of them are located in urban areas and given the voluntary nature of the profession, it is at this stage not possible through the law to plan their dispersal in a manner which would adequately and equitably serve the needs of the Indian masses. Such a measure ought to be at least proposed and discussed. But, for the time being, we accept the realities as they are.

Alternative system

5.6. If professionalized model of justice delivery thus cannot be extended to meet the legal needs of the Indian masses, it becomes incumbent to consider alternatives. The alternative is deprofessionalized model of justice. In this model, the indigenous juristic potential of the people, including their own sense of justice, is allowed room for development. This has been sought to be done through people's participation in the administration of justice.

People's participation in the administration of justice.

5.7. Settlement of disputes arising in a locality by a body of laymen of the locality is almost universally recognised. Number of such institutions all over the world may be briefly noticed to substantiate this statement¹. The institution of Justice of the Peace in England and United States of America, 'Peoples Court' in USSR and with minor variations in all Eastern European countries manned by Lay Justices, all entail people's participation in the administration of justice. Yugoslavia is making an attempt in the direction of setting-up exclusively lay tribunals more or less based on the ideology similar to that underlying our Indian Panchayats.² So is the remarkable experience of Hungary in the System of People's Assessors.³ Popular assessors, mediation committee, the district committee, the resident's committee as devised in China provide for people's participation. There are similar institution in Lusaka, Burma and Sri Lanka. The concept of lay participation in judicial decision-making made its appearance centuries back and it began with the appearance of a "third party" who establishes the ransom following the periods of self judgment or blood feud.⁴ Mediation model for settling disputed issues developed when and where the third party intervening in the dispute had sufficient prestige and power to enforce decision,⁵ ransom indicated state intervention, private injury became public injury which assisted the process under which passing judgement became a state function⁶. In some form or the other, lay local participation in the mode and method of resolution of disputes was always in existence.

Indigenous system in India.

5.8. Before the advent of the British system of justice, there undoubtedly was an indigenous system for resolution of disputes in India. The impact of English Language, Western literature, the British system of justice and the universal rationality of Western Law have combined to induce an inbuilt prejudice for anything ancient. However, while trying to unearth and evaluate the indigenous system, it was found that the essentials of our ancient system were not very different from those of our present system⁷. While comparing the two systems, it was accepted that the subsidiary features of the present system include clumsy and cumbrous procedure, while the earlier one was simple and less-formal. Undoubtedly, 'as the society

¹The Institution of 'Justice of the Peace' in U.K. dealing with the greater part of criminal jurisdiction and a small but not unimportant part of civil jurisdiction 'is the wonder of all foreigners, for nothing like it exists in any other part of the world'. 'With few exceptions, this institution has worked quite satisfactorily and it is quite cheap'; C.K. Allen, *The Queen's Peace*, The Hamlyan Lectures (Fifth Series, 1953). P. 178.

² *Report of the Study Team on Nyaya Panchayat*, Government of India, Ministry of Law (April 1962), Ch. III, para 16; p. 29.

³ See Kalman Kulscar, *People's Assessors in the Courts; A study on the Sociology of Law* (1982).

⁴ *Id.*, p. 17.

⁵ *Id.*, p. 19.

⁶ *Id.*, p. 18.

⁷ *LCI Fourteenth Report*, Ch. IV, para 5, p. 25.

advances from stage to stage, its needs alter from time to time and any system which governs the functioning of society or its component parts would also call for progressive modification¹. One has, therefore, to keep in mind while devising the modern system, the changes that have occurred in the conditions and structure of the society for which the system is to be devised.

5.9. The model of new mechanism for resolution of disputes at grass-roots level was misdescribed as a Nyaya Panchayat of the earlier days. Serious reservations were voiced at a number of workshops organised by the Law Commission in different parts of the country against reactivation of Nyaya Panchayat which, it was said, in the prevailing atmosphere in the rural area was foredoomed to failure. The past experience has been one of lack of confidence in people's participation in administration of justice. Somehow or the other, popular participation in the administration of justice creates misgivings in the minds of the people other than those to whom such an opportunity has never been extended. The urban elite consider that administration of justice requires technical knowledge of law and those uninitiated in the knowledge of law cannot be entrusted with the task of administration of justice. 'Justice according to law' has been interpreted to mean 'justice rendered by those who know law'. In other words, advanced knowledge of law is a pre-requisite for dispensation of justice. Scholars in the sociology of law have now recognised the requirement for non-specialised knowledge in order to render justice. Vilhelm Aubert after a detailed survey concluded that 'atleast in Norway the pure legal model now played a reduced role in the organised resolution of conflicts'². Once the assumption that knowledge of law is a pre-requisite for rendering justice is shown to be unfounded, one can safely think of a better model of participatory justice. The knowledge of local traditions and customs and awareness of local interests would help in making lay participation in administration of justice effective. The system of Jury is an apt illustration. People's participation in administration of justice may help in rejecting classical Marxist's assertion that the court is an instrument by which the dominant social class maintains its hold over the remainder of population. In fact, the relative absence of status differentiation between tribunal and disputants, the informality and the flexibility of the procedures, the social and physical proximity of the proceedings of the location of the dispute or the violation, enhance the effectiveness of the popular courts in reshaping the attitudes and behavioral patterns of workers and residents³. Participatory ideology has two related objectives; firstly, to facilitate the involvement of the working classes and the rural peasantry in the processes of conciliation panels, so that they may thereby sharpen their awareness of the socialist policies and developmental programmes of the Government, and recognise how such policies may be applied towards the resolution of the social and inter-personal problems of the area. Secondly, through the articulation of these policies and goals in the processes of these panels to further reshape prevailing values and attitudes of the disputants and other members to the needs of a socialist society.

Apprehension against reactivation of Nyaya Panchayat.

5.10. Let us at this stage recall the apprehensions voiced by the earlier Law Commissions on conferring wide jurisdiction on Nyaya Panchayats. The Civil Justice Committee (1924-25) observed that 'communal differences and factions are in the way of any further extension of the jurisdiction of these tribunals'. Though there may be a grain of truth in this belief, it appears to be an over-reaction. In villages, where there are common interests to be protected, common services to be rendered and common funds to be administered, it is idle to ignore the common life of the village in which the necessities of neighbourhood have held their own or have prevailed against the divisions of caste.⁴ The law Commission in its Fourteenth Report, after taking note of this observation and also after taking note of the evidence gathered to the effect, further observed that 'these factions and divisions have increased by reason of the introduction of adult franchise all over the country and the appearance of political parties in the villages', rejected this criticism and discounted the apprehensions. The law Commission concluded that 'there is no reason why, with proper safeguards, these courts (Nyaya Panchayats) should not function with a fair amount of success and either conciliate or decide the petty

Apprehensions about the Nyaya Panchayat system dispelled.

¹ *Ibid.*

² V. Aubert 4—: "Law as a Way of Resolving Conflicts; The Case of a Small Industrialised Society"—in: *Law in Culture and Society*, pp. 299—302.

³ Neelan Tirucholvam, *The Ideology of Popular Justice in Sri Lanka*, p. 7.

⁴ "Report of the Civil Justice Committee", Page 116, cited in *LCI Fourteenth Report, Vol. II, Ch. 43, para 7, p. 876.*

disputes arising in the villages¹. Similarly, the Legal Aid Committee set up by the Government of Gujarat took notice of 'the factious atmosphere in villages further sub-divided by caste, community and politics', and entertained a genuine apprehension that 'it would be difficult to expect evenhanded justice to be meted out by members of Nyaya Panchayats who would belong to one faction or group or the other.² These hesitations were dispelled by the overriding consideration that the Nyaya Panchayats with a slightly different pattern would be an effective vehicle for rendering justice on the spot or at the doorstep of the litigants. It would have a healthy impact on the village economy inasmuch as it will be a low cost justice system and man days in securing justice would not be lost. The psychological change that the rural poor would undergo by this altered system of administration of justice by their own peers in substitution of an alien system would be immeasurable. Trust them, provide safeguards for possible pitfalls, but do not reject them. Any innovation is always fraught with unseen danger but that by itself cannot be a road block to change.

Constitutional justification for a new forum of Nyaya Panchayat.

5.11. A forum for resolution of disputes with people's participation in the administration of justice is the constitutional goal mandated by article 39A. It may also appear to be justified in terms of providing simple procedure which may help in fighting the delay in the disposal of disputes simultaneously reducing the cost and making justice effective, inexpensive and substantial in character³. From State court to participating in the administration of justice is the goal intended herein.

From Nyaya Panchayat to Gram Nyayalaya.

5.12. In order to avoid any possible confusion arising from the distressing experience of the present state of the Nyaya Panchayats and to give a distinct connotation to the new forum which is in more ways than one dissimilar to the existing Nyaya Panchayats and which is couple of steps ahead of it, it was considered advisable to find a new name for the forum. There were numerous suggestions in this behalf. The name of the forum presented a complex problem. Nyaya Panchayat was the most common name proposed, but it also carried a stigma of its past failure. Lok Adalat is at present a popular phenomenon. That name must be rejected for a valid reason in the sense that Lok Adalat, as is understood by people at large, is a voluntary organisation to which no one can be compelled to submit his case. The Commission is recommending the setting up of a statutory village level court and its jurisdiction is not optional. If the dispute is of the nature which falls within the jurisdiction of the proposed forum and arises within the local limits of the jurisdiction of it, the parties, if they seek resolution of the dispute, have no option but to resort to it. Therefore, the name Lok Adalat would not be onomatopoeic and might even be misleading and, therefore, does not command to the Commission. Having examined various alternative suggestions, the Commission feels that the name 'Gram Nyayalaya' would adequately describe the new forum.

Structure of Gram Nyayalaya.

5.13. Opinions widely differed in the matter of structure of the proposed forum. Some of the social activists and village level workers leaned in favour of a wholly elected body. The election, according to them, may be either direct by the village community or indirect by the elected members of the local Gram Panchayat. Those reacting to the experience of present day Nyaya Panchayats advocated induction of a legally trained mind in the composition of the Gram Nyayalaya. According to them, this would save the forum from the wrath of the superior courts and will also cater to the view that a legally trained mind is available for dispensing justice. Those in favour of induction of a legally trained mind suggested the induction of a Munsif-Magistrate/Civil Judge (Jr. Division)/Judicial Magistrate First Class. Some advocated retired Judges' service to be utilised in this behalf. One view of which notice must be taken was higher level Judges should man the Gram Nyayalaya so that it would inspire confidence in the litigating public.

The constitutional goal is to make justice inexpensive, easily available, non-formal and substantial. The quality of justice would depend upon the nature of the forum that will be set up to render justice. It is off-repeated occasionally with some emotional overtones that we may better be ruled by laws than by man. But the man who should rule the society in the matter of rendering justice must be men of sound commonsense, unbiased in approach, free from political compulsions, religious

¹ LCI Fourteenth Report, Ch. 43, para 25, pp. 911 and 912.

² Report of the Legal Aid Committee Government of Gujarat, (1971), para 13.14 (iii), p. 211.

³ For a comprehensive Critical Review of Nyaya Panchayat System, see U. Baxi, *The Crisis of the Indian Legal System*, (1982), Ch. 10, pp. 295-327.

bigot and caste considerations. An elected body may not be able to ensure the induction of, apart from legally trained persons, such reputed socially oriented village workers. In order, therefore, that the Gram Nyalaya may inspire confidence in the village community, it became an imperative necessity to have a forum in which a legally trained mind will preside over the body. However, to avoid such legally trained mind approaching village disputes from a purely technical legalistic approach, it would be useful to induct two other persons who are village level workers and who are educated and socially oriented. The three should constitute Gram Nyayalaya. It would not be too unwidly and it would have all the advantages both of state courts approach and participation of lay public in the administration of justice.

The object underlying the induction of a legally trained mind is to ensure that in rendering justice, substantive laws would be respected. There would be a sort of or some kind of continuity with the present system. The attempt is to provide an interaction between a legally trained Judge and socially oriented village workers. The forum would also allay the apprehension more imaginary than real of the superior courts in the matter of dispensation of justice.

The Gram Nyayalaya should consist of a legally trained Judge belonging to the cadre of Judges to be specifically set-up for this purpose. In order to select legally trained Judges for Gram Nyayalaya, the State shall form a Panchayati Raj cadre of Judges. They should ordinarily form part of the subordinate judiciary in the State. The Judge must have all those qualifications which he should have for being recruited as Munsif Magistrate or Civil Judge (Junior Division) and Judicial Magistrate, First Class. This to some extent ensures continuity with the present system.

The Gram Nyayalaya shall consist of thus the Panchyati Raj Judge and two lay Judges. There were suggestions to the effect that instead of two there must be four lay Judges so that the historical tradition of India of ancient antiquity 'Panch Parmeshwar' would be demonstrably carried out. The Commission is of the opinion that for a permanent continuing body, availability of five Judges on every occasion may create problems and for simple village level disputes, it would be an unwidly body. Therefore, in order to have a compact body, the Commission opted in favour of three Judges including the Panchayati Raj Judge.

The approach of the Commission will ensure that a legally trained mind is available for dealing with questions of law if they arise while disposing of the dispute brought before the forum. He would render assistance on questions of law to the two lay Judges. The two lay Judges would bring in the wealth of local customs, traditions and knowledge of village problems. While rendering justice, there would thus be an interaction of a Judge coming from a different locality, born and brought up in a different atmosphere and having the wealth of knowledge of the law in force with the commonsense approach to dispensation of justice. The resultant outcome would ensure not only justice according to law, but justice according to commonsense, equity and good conscience. It is expected to be free from the complex procedural and Evidence Act formulations.

5.14. The mode of selection of the Panchayati Raj Judge should not present any difficulty. As he is to be drawn from the cadre of Munsif Magistrate/Civil Judge (Jr. Division), Judicial Magistrate, First Class, for the time being the same method of selection will apply which the Commission is informed, is that the selection is done by the State Public Service Commission in which a Judge nominated by the Chief Justice of the concerned High Court participated. For the time being, the same method may be adopted. As the proposed forum requires to be established in such manner as to generate confidence in the litigants coming before it, it is desirable that a Member of the State Judicial Service at the lowest level with three years experience should be selected for this cadre. The selection must be made by the High Court. Selection of the Presiding Judge.

5.15. Selection of lay Judges presented a formidable problem. Extreme views were expressed in this behalf. There were votaries of wholly elective element. There were advocates of selection by non-governmental social service organisations. There were others who espoused the view that once elective principle is substituted by selection/nomination principle, it would strike at the very root of participatory justice and the power to select is likely to be abused and misused. Those in whom the power is vested, it was said, would so exercise the power that political influence cannot be excluded. Once political influence intrudes into the selection method, it would strike at the very fundamental assumption of judicial system namely, Judges are free from political influence or political bias. It must be confessed that no solution is likely to be foolproof or would satisfy all different points of view. Selection of Lay Judges.

The votaries of election method asserted that if participatory justice is to generate confidence, the forum must have people's chosen representatives. They are votaries of the Magna Carta principle of trial by one's own peers. They asserted that remove the election and the concept of participatory justice becomes a shadow without substance. Elective principle has been supported by Zinabhai Darji Report as well as Balwantrao Mehta Committee. Ashok Mehta Committee Report was not in favour of elective principle. Rajagopaul Committee has advocated elective principle. Democratic decentralisation would inhere the concept of elected judges. It is not possible to completely disabuse one's mind of politicised village atmosphere. Panchayat Elections are fought on party lines. Elections do divided electorate. It generates heat, passion and attachments. It leads to violence. Further the factious village atmosphere is sub-divided on caste, communal and religious considerations. Once election is brought in, it would be difficult to keep its abuses out of it. Undoubtedly, the nation elects its political managers by direct election. That should be the goal but when it comes to electing Judges, slightly different considerations enter the verdict. By and large, the view expressed was that political alignment, must be avoided in selecting/electing Judges. Once elective method is adopted, it is difficult to keep this consideration out of the field. Undoubtedly, the votaries of elective method included such highly placed persons as Chief Minister of Rajasthan, Director of Banwasi Sewa Ashram and Several others. The contrary view is equally firmly expressed. But on the whole the balance tilted in favour of selection and against election.

Once elective element is excluded the question is how to select/nominate panel members. Two questions were raised in this behalf; (1) in whom the power should be vested for selecting/nominating panel of lay Judges and (2) who should finalise the panel ?

Authority and power to select the panel.

5.16. The approach in selecting such an authority which would select a person to be vested with judicial power of the State should be such an authority as would be immune to external pressures as far as possible. The authority should have the paraphernalia to collect correct antecedents of the proposed persons. One view was that such a panel should be drawn up by the Collector, S.D.O., M.L.A., etc. and it should be finalised by the District & Sessions Judge. Another view was that because of the frequent transfers of District Magistrates, and District Judges, they would not be in the know of detailed antecedents of a person proposed to be nominated. For this reason, the previous District Magistrate and District Judge should be associated if the present incumbent of the post has been in-charge for less than six months. One of the learned Judges of the High Court responded who to the Working Paper has remarked that the panel of lay Judges should be finalised by the District Judge alone. He may consult the Taluka level Judges, Chief Judicial Magistrate, District Magistrate, etc. in doing so; but he should have the final say in the matter since the District Magistrates are invariably Collectors or Deputy Commissioners and may not be able to act on their own. He suggested that there is no need to provide for the approval of laymen's panels by the High Court because this will cause delay and increase the bureaucratic work. Instead, the High Court should have a power of revision of the panel which should be exercised by it *suo motu* or on a complaint.

Another learned Judge suggested that the District Judge should alone draw up a panel after taking into consideration such names as may be suggested by the District Magistrate. He apprehended that the political influence on the District Magistrates cannot be ignored and if political influence is likely to be exercised, then the evils disfiguring the elected Nyaya Panchayats are likely to percolate into the new scheme.

Having analysed in depth various suggestions, the Commission is of the opinion that interaction of District Magistrate and District & Sessions Judge would reasonably ensure a panel of competent persons free from political caste, communal, religious or parochial considerations. Therefore, a selection committee of District Magistrate and District Judge of the concerned district should be constituted in each district for this purpose. To begin with, District Magistrate and District Judge should separately draw up a panel upto a number far exceeding the minimum required. Thereafter, they must exchange their panels. A few days after, they must assemble, interact and finalise the panel. The panel of laymen should, as far as possible, be an agreed one, failing which the District Magistrate and the District & Sessions Judge may recommend their separate lists and also their objections to the names suggested by other member of the selection committee. The entire

panel whether it is drawn up on consensus, or partly agreed or wholly separate, should be submitted to the Chief Justice of the High Court having jurisdiction. The Chief Justice, in consultation with two of his colleagues, shall finalise the panel. It would be open to him to call for additional information about the persons figuring in the panel or separate lists submitted by the members of the selection committee. The selection must be confined to the residents of the District. While preparing a panel a member of the selection body, may have recourse to his subordinates to collect the antecedents of the proposed persons. The members of the selection body should have first hand information, as far as possible, through authentic sources enabling checking of the antecedents of the persons proposed by one member or by the other member of the selection committee. It is imperative that the person to be selected must satisfy the criteria hereinafter prescribed.

It would be open to the members of the selection committee to have discussions with non-political social workers or officers of social service organisations in the district. Care should be taken to provide representation to residents of various talukas/tehsils comprised in the district. Adequate representation should be ensured to members other weaker sections of the society, members of SC/ST, women and backward classes. Panel members must represent the cross-section of village community.

5.17. Diverse views were expressed on the minimum qualification, the lay judges should have. It was said that the lay judges should have minimum education, and must be men of integrity, character and responsibility. Ordinarily, active members of political parties, wealthy persons, big farmers and moneylenders should be excluded from consideration. Members of the depressed and deprived classes, should have preference. Persons belonging to teaching profession, social workers, office bearer of non-governmental, social service organisations should be encouraged to be on the panel. One speaker remarked that they must be within the age group of 25 to 60. In the matter of educational qualification it was said that a degree holder must be preferred but if not available the selectee must have passed higher secondary school examination. Winners of national awards if residents in the villages, must be preferred. One view was that local residents belonging to professions or in service would perform their duties more satisfactorily, compared to marginal farmers, petty shop-owners and the like. Residence in the area for at least 260 days in a year would make the person eligible for being put on panel. Some social activists submitted that educational qualification would be counter productive and if prescribed, 75% of local population would be excluded from consideration. **Educational and other qualifications.**

Is there any justification for prescribing educational qualification? There is no doubt that the cases which the proposed Gram Nyayalaya would deal with are not likely to be complicated and the procedure they would be required to follow in such cases would be simple. Education enlarges vision, broadens outlook, enriches values and generally develops personality. A programme of training them into decision making process is to be prescribed. They must be able to weigh the evidence put before them. For all these reasons, it is desirable that they must possess some educational qualification.

As observed by the study Team on Nyaya Panchayats¹ conditions in India are not the same in every part of the country and these vary considerably from place to place. While it may be possible to secure law graduates to man these courts in some parts, it may not be possible to procure persons even with elementary qualification in certain backward areas. Apart from this, villagers tend to migrate to urban areas even with elementary qualification.

On an overall consideration, the safe middle course is to prescribe a graduate degree as a qualification failing which those who have obtained Higher Secondary School Examination Certificate would be eligible. Educational qualification may be prescribed as a desirable and not as minimum qualification. In the matter of selection of persons from Scheduled Castes, Scheduled Tribes, backward communities and women, educational qualification may be dispensed with if adequate number of persons with educational qualification are not available. Persons to be selected should preferably be within the age group of 30—65.

¹ Report of the Study Team on Nyaya Panchayats, p. 63.

Disqualifications.

5.18. The negative criteria may as well be prescribed to keep certain elements away from the fountain of justice. Conflicting and contradictory opinions expressed in this behalf converged on one point that as lay judges would be enjoying judicial power of the State and as Constitution of India mandates that judges should be free from political influence, active political party workers have to be excluded from consideration. In order to create confidence in common man in this age of common man, elite, wealthy persons, rich and big farmers, high pay bracket service personnel and money-lenders must be excluded from consideration. Persons convicted of an offence involving moral turpitude, economic offenders, undischarged insolvents and the like should be excluded from consideration.

The Gram Nyayalaya should be completely free from elitist approach. It must aim at rendering justice oriented by the approach of a common man. The lay judges should avoid being overwhelmed by dominant classes of the society. In an unequal fight between a member of the deprived section of the society and a well-to-do person, it must have the capacity to stand up against the power of wealth. The lay Judges should be men of character and integrity. In order to keep the forum of Gram Nyayalaya free from political skulldrugery, economic overlordship and fear from anti-social elements, it has become necessary to keep certain persons with non-too-respectable track record away from the forum. In this age of common man, justice should not be the preserve of higher castes, dominant classes, wealthy members of the society, anti-social elements, black marketeers and hoarders and moneylenders and even higher pay bracket service personnel. If these are treated as disqualified to be selected on the panel of lay Judges, there will be a reasonable assurance that decent respectable common man belonging to the village community will find their place on the panel of lay Judges. It is their participation which is the dominant theme of this Report.

Number of voluntary social service organisations have come up in the rural areas. A list of such organisations should be maintained at the district level. Their assistance may be taken in devising a suitable panel. The success of this innovation is likely to rest wholly on the selection of lay Judges. With right sort of persons the new forum will inspire immense confidence and guarantee its success.

Training of lay Judges to articulate their approach.

5.19. To articulate the approach of the Gram Nyayalaya both to the subject matter of litigation and the litigants as well as the method of disposal of causes and controversies, it is absolutely necessary that initial training should be imparted not only to the Panchayati Raj Judges but also to the members of the panel. All the three of them should be imparted basic training in creating a new atmosphere in the forum where all formal technical approach must be eschewed. A voluntary conciliatory effort should start the proceedings and all attempts must be made to narrow down the differences between the parties. Every attempt must be made to resolve the dispute by conciliation and consensus. The Panchayati Raj Judges should assist in imparting information about the relevant point of law, social justice approach, non-formal disposal of causes and deprofessionalised atmosphere. Members of the panel should be imparted training in decision making process free from prejudices of caste, community, colour, sex or religion. They must be acquainted with fundamental approach to justice, namely, that the weak and lessfortunate should not be the victims of class exploitation. The training may extend to a period of three months. A re-orientation course about the change in pattern of law, sociology of law, object and purpose behind justice system would be of immense assistance to the members of the proposed forum.

The Law Commission, in its Fifty-ninth Report (1974), stressed that in dealing with disputes concerning the family, the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlements before the commencement of the trial. Accordingly, the Code of Civil Procedure was amended in 1976 when provision was made for a special procedure to be adopted in suits or proceedings relating to matters concerning the family, *vide* Order XXXII-A. Rule 3 of this order provides that the court will make an endeavour to assist the parties in arriving at a settlement in family disputes specified therein and rule 4 provides that the court may secure assistance of a welfare expert. However, the experience has shown that not much use has been made of this conciliation procedure except in the State of Himachal

Pradesh¹. In this context, it is worthwhile to take notice of the enactment of the Family Courts Act which provides for courts with different orientation to function in a different environment so that a conciliatory approach with a view to resolving disputes is effectively adopted. The atmosphere in such a court at the conciliation stage, will be just informal and the procedure will not be governed by any rigid rules. This approach will have to be adopted by the Gram Nyayalaya as the Village Community is also like a family which is to be preserved by not straight-way resorting to adversary approach. When we visited Jaipur, we had the opportunity of holding discussions at length with the Presiding Judge of the first family court, and perhaps the only (so far), established in the country. His experience has been that he could resolve various disputes at mediatory level. Wherever he could not success at mediatory level, he dealt with them at adversary level in the presence of welfare experts and other socially oriented members of the society. Further, wherever we went, we noticed that the system of Lok Adalats had gained momentum. As a matter of fact, initially there was some confusion in the minds of the participants regarding the difference between Lok Adalats and the forum proposed by us. We had to explain that the Lok Adalats function only upto mediatory level whereas the forum proposed by us would also take over at adversary level like any other court. We feel that the people, in general, are in favour of conciliatory approach at the initial stages. As such, we strongly recommend that the approach of Gram Nyayalaya should be mediatory at the initial stages except in regular criminal proceedings where save the compoundable offences trial has to be held. Offence being an injury done to society there is hardly any question of conciliation.

The successful functioning of Gram Nyayalaya would depend upon the approach of the members of Gram Nyayalaya. Proper training of the members of Gram Nyayalaya towards cultivating this approach is a must. Such training could comprise of subjects like method of hearing cases, attempted conciliation and resolution of disputes by compromise and training in the decision-making process. The lay Judges in particular should be taught that they should conform to the principles of natural justice. Justice equity and good conscience should guide their deliberations and decisions. They should also be informed that wherever possible, all endeavour should be made at reconciliation between the parties and eradicate the causes of disputes and thus pave the way for better relationships.

In teleological terms, education is defined as preparation for life, not for earning a living, while training is understood to have always a vocational purpose. With particular reference to public service, education is understood to be the general preparation which a young person receives before entering public employment or at a later point in the career and directed towards the performance of the duties assigned to the individual². Pre-service and inservice training even for higher qualified persons have been found to be of considerable importance. In 1973, President of All India Panchayat Parishad vociferously advocated 'the need for imparting training to the elected representatives and the functionaries of the Panchayati Raj institutions among other things, on the principles and mechanics of democratic functioning'³. The programme of training both pre-service and inservice for Panchayati Raj judges and lay judges is not likely to impose additional financial burden. Panchayati Raj training centres have been started and they are located in different parts of the country. These centres offer short-term courses to the members of the Nyaya Panchayat and also to other functionaries of the Panchayati Raj.⁴ It is only necessary to expand these training centres and to provide adequate facility for adequate training of the lay Judges.

5.20. Gram Nyayalaya is to consist of a Presiding Judge belonging to Panchayati Raj Cadre Judges and two lay Judges. In view of this composition, a serious debate ensued as to whether the two lay Judges by a majority decision can dispose of the dispute leaving the Presiding Judge in minority with a dissenting opinion. One view was that the two lay Judges must be assigned the role of assessors as the term was understood in the Code of Criminal Procedure, 1898, before that institution was abolished. To recall their role, the opinion of the assessors on questions of fact was not binding on the trial judge, and he could ignore the same with impunity. In the case of a Jury, unanimous or majority decision on questions of

The problem of unanimity.

¹ Detailed information supplied by Chief Justice of Himachal Pradesh High Court—Justice P.D. Desai.

² U.N., 1966, p. 27.

³ M.Z. Khan, *Profile of a Nyaya Panchayat*, (1982). p. 40.

⁴ *Ibid.*

facts was binding on the trial Judge. Jury and assessors were bound to take the law from the Judge. If the Judge considers the unanimous or majority decision of the Jury unreasonable or perverse, it was incumbent upon him to give reasons and refer the case to the High Court for an appropriate order. It was not open to the Judge to overrule or ignore the majority or unanimous decision of the Jury. The institution of assessors was a butt of ridicule. It served no purpose except that it had a facade of participatory justice and it was a shadow without substance and substance without significance. Keeping this historical background in view, would it be wise to repeat the experience of assessors? The answer is in the negative. The situation would not be improved by reintroducing the Jury system. In order to make participatory justice effective and meaningful, a beginning has to be somewhere made. The Gram Nyayalaya is a step in that direction. In view of the fact that disputes coming before Gram Nyayalaya will be simple, uncomplicated and not involving complex questions of law, it is better to generate confidence of the society in lay participation in the administration of justice. Only one safeguard need be provided. In the matter of law, the Presiding Judge will give necessary directions to the two lay Judges. But in the matter of adjudication and decision of disputes, in the absence of a unanimous decision, a majority decision even if composed of two lay Judges will be the decision of the Nyayalaya. Any other view would again render the position of lay Judges ineffective and the attempt at introducing participatory justice will receive a set back. Viewed from this angle, the other extreme view that the two lay Judges alone should be entitled to adjudicate upon the dispute and the Presiding Judge will give them guidance must be rejected on the ground that it would run counter to the whole concept of Gram Nyayalaya. As soon as the hearing is over, the three Judges should deliberate and try to arrive at a unanimous decision. The Presiding Judge should give guidance in the matter of law and decision making process. This novel experiment ensures interaction between a legally trained mind and people of sound commonsense duly informed in ways of the world and conversant with local conditions, traditions, beliefs and approach to local disputes. Nothing should be done to impair the relative equality among the three Judges composing the court. The lay Judges should not be belittled in any way. People's faith must be generated so as to induce their acceptability. Therefore, while providing that it would be the primary duty of the Panchayati Raj Judges, who would be presiding over the Gram Nyayalaya to give effective guidance to the two lay judges on questions of law that may arise in the course of proceeding and may have to be dealt with for resolving the disputes, in the matter of decision, the majority view in the absence of an unanimous decision will be the decision of the court.

CHAPTER VI

CRITICAL EXAMINATION ON THE QUESTION OF JURISDICTION, POWERS ETC.

Territorial
Jurisdiction.

6.1. Commissions and Committees have at regular intervals recommenced introduction or rejuvenation of institution providing for participatory justice till now commonly described as Nyaya Panchayat. However, having shown very serious consideration for Nyaya Panchayat, every report of the Commission as well as of a Committee has been chary of conferring substantial jurisdiction on the institution of Nyaya Panchayat¹. Chapter 43 of the Fourteenth Report of the Law Commission has extensively set out jurisdiction conferred by various State statutes on a Nyaya Panchayat. Civil jurisdiction of a Nyaya Panchayat varied between pecuniary limits of Rs. 25 to Rs. 50. That Law Commission after review of the statutes recommended a maximum limit of pecuniary jurisdiction of Rs. 200 or Rs. 250. It further advocated that if any particular Nyaya Panchayat has proved to be efficient, its jurisdiction may be enlarged to Rs. 300 with the approval of the High Court. In regard to criminal matters, the first Law Commission did not recommend empowering the Nyaya Panchayat to impose substantive sentence or any sentence in default of payment of fine. The jurisdiction in this behalf was restricted to inflicting punishment by way of fine not exceeding Rs. 50.

Diverse opinions were expressed in the matter of conferment of civil and criminal jurisdiction on the proposed Gram Nyayalaya. There was visible hesitation in favour of conferring unlimited pecuniary jurisdiction. There was also hesitation in conferring jurisdiction in criminal matters to impose substantive sentence. The whole approach appears to be a hangover of the past. In the process what is overlooked by the participants in the debate is that the forum of Gram Nyayalaya has an entirely different complexion than the traditional panchayats in that it has as its Presiding Judge, a legally trained person, who would otherwise be competent to man any court in subordinate judiciary below the district court. This innovative features must inform the mind of the Commission in devising wider and larger jurisdiction rejecting the hangover of the bygone days.

The local geographical jurisdiction of a Gram Nyayalaya should be confined to the Taluka/Tehsil for which it is set up. There shall be a Gram Nyayalaya with an office at the Taluka/Tehsil level and this Gram Nyayalaya will have jurisdiction over all villages falling within the Taluka/Tehsil. If the number of disputes coming before the Gram Nyayalaya set up for a Taluka/Tehsil are not sufficient to keep it engaged full-time, the State Government with the approval of the High Court may enlarge the jurisdiction of a Gram Nyayalaya to extend over more than one Tehsil.

A Gram Nyayalaya operating from the headquarter of a Taluka/Tehsil would be better equipped to deal with effectively and expeditiously disputes arising in any of the villages comprised in that Taluka/Tehsil. In devising a Gram Nyayalaya for each Taluka/Tehsil, the Commission has kept in view that ordinarily villages comprised in a Taluka/Tehsil will have common traditions and customs, neighbourhood information and nuances of local dialect. Setting up of a Gram Nyayalaya at Taluka/Tehsil level will not result in multiplication of courts because even at present mostly the lowest level court such as Munsif/Civil Judge (Jr. Division) is set up at Taluka/Tehsil level. The format is that a group of villages form a Taluka/Tehsil. A number of Taluka/Tehsils form a district. And the State is divided into districts. The pyramidic court structure provides for a base level court, with intermediate district courts and the High Court at the apex. At present there is a court of Munsif Magistrate/Civil Judge (Jr. Division), Judicial Magistrate, First Class at almost every Taluka/Tehsil level. With the introduction of Gram Nyayalaya, the work in the court of Munsif Magistrate will be considerably reduced. Depending upon the number of villages in a Taluka, some present day base level courts may suffer total erosion of their work. This is a relevant factor in working out cost benefit ratio. A Gram Nyayalaya at Taluka/Tehsil level, according to the view of the Commission, be expected to visit as far as possible the subject matter

¹ LCI Fourteenth Report, Chapter 43, para 45-Civil jurisdiction, upto Rs. 250, Criminal Jurisdiction upto a fine of Rs. 80; Study Team on Nyaya Panchayat, Ch. IX, para 6.2 Pecuniary limit of Rs. 250 and in criminal matters, fine of Rs. 50.

of the dispute, place where it has arisen or the spot which is a subject matter of the dispute such as in the case of a dispute as to existence of farm roads, water channels, passages of air and light etc. The approach of the Commission is that justice must be made available at the door of the rural population, an ideal which was envisioned by the first Law Commission when it observed that : 'the panchayat courts alone can solve the problem of bringing justice to the door of the villagers.'¹ The present Report is an attempt to translate this ideal into reality. Accordingly, the Commission is of the view that a Gram Nyayalaya should be set up at the head-quarter of Taluka/Tehsil having jurisdiction over all villages comprised within that Taluka/Tehsil.

The participatory forum is being devised for the benefit of the rural community. Its civil jurisdiction comprises various types of disputes at village level. The benefit of this new experiment should be made available to rural community. It was, therefore, proposed that the Gram Nyayalaya will have territorial jurisdiction over villages comprised in a Taluka/Tehsil for which it is set up. This approach may need definition of what should be called a 'village'. Confirmed votaries of participatory justice did not want to confine its experiment in the first instance to villages. Their approach was that the Commission should identify and specify the nature of disputes and irrespective of the fact that where they have arisen such as rural, urban or metropolitan areas, participatory forum must be set up for resolution of such disputes. Undoubtedly, it is a good idea, but when a definite departure is being made from this existing system, we may tread slowly and cautiously, both of which are of course negative factors. To make the experiment precise and efficacious in the first instance, this new forum should be made available to the village community. It should not be forgotten that 80% of the Indian population resides in villages. Therefore, a precise definition will have to be devised of a 'village'. The briefest definition that can be considered appropriate is 'village is a unit of administration for which no municipality is set up.' That would accurately define the area to be brought within the territorial jurisdiction of the proposed Gram Nyayalaya.

Civil Jurisdiction.

6.2. The expression 'jurisdiction' of a court connotes geographical jurisdiction, civil jurisdiction and criminal jurisdiction. The question of the scope of civil jurisdiction is not easy of solution. The past heavily hangs upon the present and blurs the vision of the future, pointed out hereinbefore, till 1958 pecuniary jurisdiction of Nyaya Panchayat in civil matters oscillated from Rs. 25 to Rs. 50 and in rare cases to Rs. 200. Panchayats, if proved efficient, were to be conferred jurisdiction upto the pecuniary limit of Rs. 500. The fall in the purchase power of the rupee coupled with enormous rise in the price of commodities and immovable properties, one shudders at the idea of conferring a jurisdiction involving civil dispute where the value of the subject matter would be Rs. 250. It would be a mockery of the much trumpeted new forum. Therefore, the past approach has to be rejected as having become utterly irrelevant. But the question that need be posed is whether ceiling in the matter of pecuniary jurisdiction is at all a relevant consideration when a new forum is devised? Various States have enlarged the jurisdiction of Munsif/Civil Judge (Jr. Division) to Rs. 20,000. Such wide jurisdiction can be conferred on the Gram Nyayalaya because among the personnel manning it would be a man of the level of Munsif/Civil Judge (Jr. Division). The approach of the Commission is that a time has come to reshape the approach as to pecuniary jurisdiction. The value of the subject matter of a dispute would have hardly any co-relation to the capacity of a person to deal with it judicially. Money value is misleading. Real value of a subject is what the claimant attaches to it. A poorman may have a high value for an ordinary thing and would fight for it. The well-to-do may ignore it. It is highly anomalous to assert that capacity to deal with judicially is related to money value. The Commission has not been able to find any co-relation between the pecuniary value of the subject matter of a dispute and the capacity of the Judge to deal with it. A lay arbitrator chosen by the parties can deal with subject matter valued at any amount. Therefore, while devising a new forum, it is worthwhile to break this tenuous and unscientific connection between the pecuniary value of the subject matter of dispute and the capacity of the person to deal with it.

The real co-relation should be established keeping in view the nature of the dispute and the capacity of the person charged with a duty to resolve such dispute. In para 2.7 of the working paper, the Commission has set out broad classification of the nature of disputes arising in rural areas. Classification and identification of

¹ LCI Fourteenth Report, Vol. II, Chapter 43, para 21, p. 909.

disputes arising in villages was done by a cursory examination of the institution of cases in Taluka/Tehsil courts variously described as court of Munsif/Civil Judge (Jr. Division). A glance at the head of each dispute therein set out would clearly reveal that the pecuniary value of the dispute is hardly relevant. How would one value a boundary dispute or a minor encroachment? How would one value dispute as to entries in revenue records? Looking to the nature of disputes in the context of jurisdiction to resolve/adjudicate it by a Gram Nyayalaya, the Commission invited opinion from various sources on the question whether pecuniary ceiling should be imposed in the matter of civil jurisdiction to be conferred on Gram Nyayalaya.

As in all other aspects, opinion varied from extremely conservative to totally radical. Those who are advocates of status quo expressed an opinion that it would be wholly risky to confer jurisdiction with a pecuniary ceiling of Rs. 5,000 on the Gram Nyayalaya. On the other hand, there was a body of opinion that the ceiling of pecuniary jurisdiction should be done away with. The centrist approach was that pecuniary jurisdiction should be that high as is at present conferred in a given State on the court of a Munsif/Civil Judge (Jr. Division).

Between these two extremes, the Commission had to find a viable medium but referable to some known principles. Careful consideration was accorded to all the rival contentions, apprehensions and reservations. The Commission is not convinced that capacity to resolve a dispute is conditioned by the market value of the subject matter of dispute. That approach has outlived its utility. The Commission is of the opinion that jurisdiction must be referable to subject matter of the dispute and not to its pecuniary value. Thus there shall be no ceiling in the matter of pecuniary jurisdiction of the Gram Nyayalaya.

The heads of dispute set out in para 2.7 of the working paper have been generally approved by all the participants as would be falling within the purview of Gram Nyayalaya. Some legal academics raised a doubt that land and revenue jurisdiction being subject matter comprised in the State List, Parliament will have no legislative capacity to enact such a legislation. This will be presently dealt with hereafter.

Votaries of Gram Nyayalaya desired an extension of jurisdiction under the following heads :

1. Non-payment of wages and violation of Minimum Wages Act;
2. Money suits either arising from trade transaction or money lending;
3. Disputes arising out of the partnership in cultivation of land;
4. Disputes as to the use of forest produce by local inhabitants;
5. Complaints of harassment against local officials belonging to police; revenue, forest, medical and transport departments;
6. Disputes arising from the Bonded Labour System (Abolition) Act, 1976 and the Protection of Civil Rights Act, 1955.

Looking to the heads of disputes herein indicated, they can conveniently be brought within the jurisdiction of the Gram Nyayalaya. Therefore, it is recommended that over and above the heads of jurisdiction in para 2.7, the aforementioned five heads be included and be brought within the jurisdiction of Gram Nyayalaya. The Commission would favour conferment of civil jurisdiction on Gram Nyayalaya in respect of disputes covered by the subject matter herein delineated :—

I. Civil Disputes :

Disputes arising out of implementation of agrarian reforms and allied statutes—

- (i) Tenancies-protected and concealed and contested.
- (ii) Boundary disputes and encroachment.
- (iii) Right to purchase.
- (iv) Use of common pasture.
- (v) Entries in revenue records.
- (vi) Regulation and timing of taking water from irrigation channel.
- (vii) Disputes as to assessment.

II. Property Disputes :

- (i) Village and farm houses (Possession).
- (ii) Sehan.

- (iii) Easements : Right of way for men, cart and cattle to fields and courtyards.
- (iv) Water channels.
- (v) Right to draw water from a well or tubewell.

III. Family Disputes :

- (i) Marriage.
- (ii) Divorce.
- (iii) Custody of children.
- (iv) Inheritance and succession-share in property.
- (v) Maintenance.

IV. Other Disputes :

- (i) Non-payment of wages and violation of Minimum Wages Act.
- (ii) Money suits either arising from trade transaction or money lending.
- (iii) Disputes arising out of the partnership in cultivation of land.
- (iv) Disputes as to the use of forest produce by local inhabitants.
- (v) Complaints of harassment against local officials belonging to police, revenue, forest, medical and transport department.
- (vi) Disputes arising from the Bonded Labour System (Abolition) Act, 1976 and the Protection of Civil Rights Act, 1955.

Criminal Jurisdiction.

6.3. The very suggestion of conferment of criminal jurisdiction upon Gram Nyayalaya has evoked in some quarters strong resentment and confrontation. Avoiding repetition, it must be stated that this again is a hangover of the past. When Nyaya Panchayat was exclusively manned by the elected representatives of village community, i.e., all lay judges, there was serious reservation in the matter of conferment of criminal jurisdiction on such untrained persons. Extreme views were propounded in the Workshops as well as in written memoranda submitted to the Commission in the matter of conferment of criminal jurisdiction on Gram Nyayalaya. At the one end of the spectrum, there were votaries in favour of total denial of criminal jurisdiction being conferred on Gram Nyayalaya. Some advocated that limited jurisdiction to try cases in which upon conviction, a sentence of fine, say not exceeding Rs. 200, may be conferred. They were in favour of adopting the approval of the Study Team on Nyaya Panchayat.¹ Some participants canvassed the view that the Gram Nyayalaya should have the power to try offences in which substantive sentences extending upto 7 years can be imposed upon the accused.

Article 21 of the Constitution provides that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." Article 22 provides that "every person who is arrested or detained in custody, shall be produced before the nearest Magistrate within a period of 24 hours of such arrest". Our Constitution further guarantees that the person arrested or detained is entitled to consult and be defended by a legal practitioner of his choice.

A criminal conviction is likely to result in the deprivation of personal liberty and as provided in article 21 "any procedure by which a person can be deprived of his personal liberty must be in tune with the recent trend of decisions commencing from *Menaka Gandhi v. Union of India*² and *A.K. Roy v. Union of India*³.

In the past, minimal criminal jurisdiction was conferred on Nyaya Panchayat, under which it could at the highest impose a fine of Rs. 50. That should not deter the present Commission from examining the question *de-novo* and in all its ramifications.

A conviction for an offence attaches a stigma to the offender. Even when he suffers the sentence, and repays his debt to the society, the stigma is not washed out but haunts him and his family for a long time. Therefore, a view gained ground that a legally trained experienced person would alone be competent to try the case and record conviction and impose sentence. It is too serious a matter, it was said, to be left to untrained lay persons. Undoubtedly, this is a matter of serious consideration. What is the present situation? A Munsif Magistrate of the First-Class can at present try cases which are triable by him as provided in the Code of Criminal Procedure

¹ Report of the Study Team on Nyaya Panchayat, Chapter IX, para 11, p. 80.

² AIR 1978 SC 597.

³ AIR 1982 SC 710.

1973. A Munsif Magistrate of the First Class can impose sentence not exceeding 3 years or of fine not exceeding Rs. 5,000 or both. (See Section 29(2) of that Code). Now if a Munsif Magistrate alone can try cases with power to impose substantive sentence not exceeding three years, the Commission sees no justification for whittling down this jurisdiction only because the presiding Panchayati Raj Judge who is equal, if not more competent than a Munsif Magistrate, will have two lay judges and three of them would constitute the Gram Nyayalaya. Therefore, shedding the apprehensions of the past, and keeping in view the mandate of article 21 and bearing in mind the fact that the Gram Nyayalaya is to be manned amongst others by a Panchayati Raj Judge, who would be of the level of Munsif Magistrate, the Commission is of the firm view that the Gram Nyayalaya must have jurisdiction to try all offences which can be tried under the Code of Criminal Procedure, 1973, by the Judicial Magistrate First Class.

Is the Commission charting a hazardous course in enlarging criminal jurisdiction of the Gram Nyayalaya? Is it likely to be abused? Is the village community being exposed to grave risk of injustice? The answer unquestionably is in the negative. The Presiding Officer equipped with legal training would provide an effective guidance to the lay judges constituting the Court along with him. The trial will be, to be presently mentioned, according to the procedure prescribed in the Code of Criminal Procedure, 1973, for trial of summons cases and warrant cases as the case may be. That ensures fair procedure. The Panchayati Raj Judge ensures basic knowledge of criminal law to the same extent available at present in the person of Munsif Magistrate. He will ensure fundamentals of criminal trial such as the presumption of innocence, the burden of proof and the benefit of doubt. The two lay judges would widen the vision of the presiding judge in the matter of the behaviour, truthfulness or waywardness of witnesses and complainants coming from rural areas. There will thus be inter-action of technocrat on one hand and experienced people in the ways of village life, on the other both of which would produce unquestionably sound decision. Any comparison with the Nyaya Panchayat in the past in this background is utterly unjustified.

Further in the trial of criminal cases, the law plays a secondary role. The emphasis is on behavioural pattern, how in a given situation a man of common sense would act, whether the narration of a witness is truthful or he is prevaricating and while determining the quantum of sentence, the circumstances both mitigating or aggravating the crime, can be better appreciated by a body composed of technocrat and lay persons. Therefore, having regard to all the aspects of the matter, the Commission is of the opinion that the Gram Nyayalaya will have jurisdiction to try all offences at present triable by the Judicial Magistrate, First Class under the Code of Criminal Procedure, 1973, as also to impose the sentence which a Judicial Magistrate of First Class is competent to impose.

6.4. Under heading III of para 2.7, it is suggested that the family disputes such as (i) marriage; (ii) divorce; (iii) custody of children; (iv) inheritance and succession of property; (v) maintenance, arising from rural areas should be within the jurisdiction of the Gram Nyayalaya. Matrimonial Jurisdiction.

It is now suggested that Parliament has enacted Family Courts Act, 1984, and it has been put into operation. It was said that the said Act, having come into force, an exclusive forum is created for certain types of cases specified therein and there is likelihood of a conflict of jurisdiction if the Commission persists with the proposals specified in the Working Paper.

Undoubtedly, Family Courts Act, 1984, has been enacted and brought into operation. To the knowledge of the Commission only one Family Court has come into existence, at Jaipur in Rajasthan manned by a male judge. Even disputes relating to marriage, divorce, and custody of children have a distinct local flavour. Urban elite couples have their own disputes relating to marriage or divorce and which has little or nothing in common with rural poor illiterate couples belonging to backward communities. In fact, customary divorce is admissible amongst some of the tribes. Therefore, though undoubtedly the Family Courts Act, 1984, has been enacted and has been brought into operation, the Commission is of the considered opinion that in the matter of matrimonial disputes arising from rural areas, the Gram Nyayalaya just have jurisdiction to deal with the same. The forms of marriage and divorce and consequent custody of children amongst Adivasis and different backward communities are traditional in character, and the knowledge of tradition is very relevant in resolution of such disputes. To illustrate, when the Commission

visited inhabited by members of scheduled tribe known as Mundas in the interior of Bihar State. The leaders of Munda tribe were critical of the judgement of the Supreme Court in *N.E. Horo v. Smt. Jahan Ara Jaipal Singh*¹ in which the Court held that a non-Munda in marrying a member of Munda tribe becomes a member of the tribe. The leaders asserted that since hoary past no one can become member of Munda tribe except by birth. For want of finance the tribe did not appear before the Supreme Court. A Gram Nyayalaya manned by a trained Judge and two lay Judges, which may preferably included woman lay judges would be better suited to deal with matrimonial disputes arising in rural areas.

The suggestion that these disputes are likely to be complicated and may involve complex questions of personal law and would be beyond the reach and understanding of the Gram Nyayalaya, must be dismissed as wholly unwarranted. The caste panchayats effectively dealt with divorce or re-unions or maintenance and custody of children. It is not for a moment suggested that the society must move backward to the tyranny of caste panch but this justifies a belief that Gram Nyayalaya would be better suited than even the Family Courts to deal with matrimonial problems arising from rural areas. Therefore, the jurisdiction in matrimonial matters set out in para 6.2., must be conferred on Gram Nyayalaya.

Revenue
Jurisdiction.

6.5. A little while back, a question was posed that as topics of land and land revenue fall within Entry 18 of the State List, Parliament is incompetent to enact a legislation conferring revenue jurisdiction on the proposed Gram Nyayalaya. Apart from this constitutional conundrum, some participants voiced serious apprehensions about the complicated questions of law that may arise under the agrarian reforms laws, under revenue laws, under irrigation laws and like statutes, and voiced an apprehension about efficacy of Gram Nyayalaya to deal with them. It was also stated that a central legislation would tread upon the powers of the States and Centre-State relations would be further strained. An alleged ugly feature of the village life brought to the notice of the Commission by numerous speakers was about the role of village revenue officer variously described as Patwari, Lekhpal, Kulkarni, Talati and the like who maintain basic revenue records and who are alleged to have perverted the entire process of agrarian reforms by manipulating entries in Jamabandh and Khasra Girdwari records. The unending list of grievances in this behalf is horrendous. It was stated that Gram Nyayalaya would be wholly ill-equipped to deal with these officers and to repair the situation by removing their tyranny.

The Commission remains unimpressed by these apprehensions. A legislation under Entry 11A in the Concurrent List : "Administration of Justice, constitution and organisation of all courts, except the Supreme Court and the High Courts" would be an effective answer. The Commission proposes devising a new forum for resolution and adjudication of disputes arising under certain specified heads and emanating from rural areas. The Gram Nyayalaya would be a body for administration of justice and a legislation for the same would squarely fall under Entry 11A. Once that aspect is disposed of, the Gram Nyayalaya, would be the most effective instrument to control and keep a vigilant supervision over the local revenue officials including the one which makes entries in revenue records. At present, the disputed entry can be questioned before the Tehsildar, or Mamlatdar and the process is unending. If this very disputed entry is questioned before the Gram Nyayalaya, it can be effectively dealt with at the spot and in a summary manner and by participation of lay judges constituting the court presumably aware of the machinations and mischief that can be perpetrated in this behalf. It may be stated that there was near consensus amongst those who responded to the Working Paper and participated in workshops that the jurisdiction under revenue matters as indicated in para 6.2 should be conferred on Gram Nyayalaya.

Seat of hearing.

6.6. The time-honoured tradition is that a Court holds its sitting at a pre-determined place. Anyone in search of justice has to appear at the seat of Court and move it in the manner prescribed by the law governing the procedure. This runs counter to the concept of justice on the door step of the seekers. In this traditional approach, generally the Judge does not visit either the site of dispute or the place where the dispute has arisen which he has to resolve. Whenever the court desires to acquaint itself with the local situation, the common practice is to appoint a Commissioner either a Court Officer or a practising lawyer or occasionally a technically qualified person—who visits the site after notice to the parties and then draws up a sketch

¹. AIR 1972 S.C. 1840.

with explanatory notes attached to it. But this time-honoured approach has always resulted in perpetuation of the disputes distracting the attempt of resolving the main dispute between the parties. As soon as the Commissioner files his report, both the parties are invited to file their objections and one or the other party is bound to object both to the report, the sketch and the explanatory notes. The objections are set down for regular hearing and end in an order of the Court. Thereafter, the cases are not unknown when the party challenging the court's order approaches the High Court by way of revision petition u/s 115 of the Code of Civil Procedure. On rare occasions, the jurisdiction of Supreme Court is also involved in this behalf. A number of civil disputes gets side railed by the controversy as to in what manner the court should have access to the first-hand and direct knowledge of the site of the dispute. If the Judge visits the site of the dispute, and this comes to the notice of the superior courts, the judge would be accused of bias and it is believed that instead of remaining an impartial and unbiased judge, he has become partisan in his attitude.

It cannot be gainsaid that in a number of simple trivial disputes, a visit to the site offers a solution. In a number of cases emanating from rural areas and reaching the courts, the dispute centres round a road or passage to the house or field and to be used by men, cart and cattle. These disputes are embroiled in technical rules, and complex legal formulations involving foreign decisions which have modulated the law. Ascertainment of easement by prescription, easement of necessity, presumed lost grant and all these technical rules thwart the resolution of such a simple dispute. If the presiding judge instead of getting embroiled in this exercise visits the site in presence of the parties, the solution would appear on the spot. Same is true of disputes as to water channels, traditional as well as State prescribed. It is equally true of the disputes as to disturbance of passage of air and light. Now if the orchestrated atmosphere of the court is substituted by the assembling of the court at the site in the presence of local people, there is greater chance of the truth emerging because one shudders at the idea of uttering untruth in the presence of or in the vicinity of ones own kith and kin and village community of which he is a member. Accordingly, in the Working Paper, a suggestion was put forward for consideration whether the Gram Nyayalaya should hold sitting whenever convenient and conducive to the resolution of dispute, by keeping in view the nature of the dispute, at the site of the dispute or in the vicinity of the subject matter of the dispute.

One feature of the debate in various centres really struck our face. In every centre when a departure from the present state court system was voiced, three discernible views surfaced in the debate. The first, and what can be described without any disparaging tone, is what should be styled as conservative, traditional or status-quoist. In the present context, the suggestion was that the court has already been devalued and if it goes on moving from place to place or village to village like a mobile dispensary, its dignity and credibility would be further eroded. The second view which can be appropriately styled as the centrist view was that while the court ordinarily should continue to sit at its pre-determined seat, where the situation, the site and the environment of the subject matter of the dispute warrants that it would be conducive to the disposal of the dispute, the court should not hesitate to visit the place after notice to and in the presence of the parties. The third view which can be labelled as left of the centre, was that it is time to translate the constitutional mandate of taking justice to the door steps of the people. Expanding the last mentioned view, it was said that for benefit of the consumers of justice, the mechanism for rendering justice on the analogy of making commodity available at the doorstep, should be made available also. As purchasers of commodity have not to roam in search of commodity, so also the consumers of justice must be spared the same. Its service must be available at the door steps. Approaching the matter from the constitutional angle, it was pointed out that article 39A mandates that the State must "ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities." It is, therefore, said that if the justice is taken to the door steps of the people, it would result to some extent in the fulfilment of the objects underlying article 39A.

Now when a new forum is to be established, it must have an office. It should be called "Gram Nyayalaya Karyalaya". It must be set up at the headquarters of Taluka/ Tehsil. Ordinary requirements of staff, office, books stationery etc. must be provided at the office. The Presiding Judge must be available at this office. The office will provide the nucleus for the activities of the Gram Nyayalaya. It must be a self-sustaining unit, not dependent for any of its requirements on the allied offices at taluka/tehsil level. Adequate funds must be provided for its effective functioning.

Any one having a dispute under any of the heads prescribed under the jurisdiction of Gram Nyayalaya has to approach in the first instance, the office of the Gram Nyayalaya at taluka/tehsil headquarters. On receipt of the complaint to be noted in the manner to be prescribed, the Presiding Judge, after perusal of the complaint or the statement of dispute should apply his mind to the question whether the Nyayalaya should assemble at the situs of the dispute. Thereafter, he can issue notice to be served by his own staff without the slightest default, requesting both the parties and their witnesses to appear at the time and on the date fixed by the Presiding Judge of Gram Nyayalaya at the situs. Most disputes coming before the Gram Nyayalaya can be more satisfactorily disposed of at or near the subject matter of dispute or in the village where the dispute has arisen. It is not envisaged that every village must provide some office for the holding of its sitting by Gram Nyayalaya. A Government building including the panchayat house, can be requisitioned for this purpose without any obligation to make any payment for its use. Even in the matter of family disputes, if the sitting is held in the village either of the husband or the wife, or the father or the son and if both the parties are in the same village, in that particular village, experience shows that the resolution of the dispute would be easy, expeditious and more satisfactory. In cases where the presence at the subject matter of the dispute is not considered relevant, Gram Nyayalaya must hold its sitting at the office of its headquarters.

Non-application of certain laws.

6.7. The root cause of the present malaise in disposal of cases in court as at present functioning have been often attributed to long, complex, unending procedures prescribed both in the Code of Civil Procedure, 1908, and in the Code of Criminal Procedure, 1973, for disposal of civil and criminal cases. Whoever one may try, it has been found impossible to extricate oneself from stages prescribed in the procedural laws. A cliché has come into existence that before one can hope to get substantial justice he should be able to procure processual justice. There is enough direct evidence on the subject that the court accords more time and spends more energy in disposing of larger number of processual issues than issues involving disposal of substantial dispute. Innumerable decisions of the High Courts and the Supreme Court are on the question of interpretation of the provision of the Code of Civil Procedure, 1908, and Code of Criminal Procedure, 1973. The Indian Evidence Act, 1872, and the Limitation Act of 1963 have made no small contribution to the present confusing and confounding situation. The warp and woof of procedural laws are so inter-twined as to make progress in the course of resolution of a dispute, almost impossible. Certain procedural orders are amenable to appellate jurisdiction (See Order XLIII, CPC). Where there is no provision for appeal, section 115 of the Code of Civil Procedure is resorted to. As if this does not set up sufficient insurmountable road blocks in the pilgrims' progress towards resolution of disputes, the interpretation of article 227 of the Constitution has further accentuated the situation.

The nature of the disputes which would be coming before the Gram Nyayalaya are, more or less, likely to be simple, uncomplicated, easy of solution and should not be enmeshed in procedural claptrap. If Gram Nyayalaya is to resolve the dispute about the passage to or discharge of water from a field from a nearby irrigation channel, following the prescribed procedure at every stage in the Code of Civil Procedure would have disastrous results. Rain God is not subject to court's jurisdiction and is not likely to obey any injunction. Weather is equally unamenable to court's jurisdiction. Now without urgent relief crops cannot be raised in a field, apart from personal loss, it is a national loss. To resolve such a dispute, putting on shelf the Code of Civil Procedure, if the gram Nyayalaya assembles at or near the field to which passage for water is in dispute, it can be resolved within a couple of hours and that too more satisfactorily. This satisfying result can be achieved without the assistance of the Code of Civil Procedure. Examination and cross-examination of witnesses, objections as to the 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.

In the past, all those who have advocated either retention of Nyaya Panchayat or expansion of its jurisdiction or a different forum permitting participatory justice, are agreed that this forum should be kept free from the tentacles of Code of Civil Procedure. It is recommended that neither the Code of Civil Procedure nor the Evidence Act should apply to the proceedings before Gram Nyayalaya.

Procedure in Civil Proceedings.

6.8. A simple procedure has to be devised. Its specific stages can be briefly narrated here. Whoever has a complaint or a dispute falling within the jurisdiction of Gram Nyayalaya must go to the office of the Gram Nyayalaya and fill in a simple form stating the name and address of the complainant, the name and address of the

opponent/respondent, brief statement of the nature of the dispute and how the dispute emanated. If the person having a grievance can fill in the form, the office of the Gram Nyayalaya must provide him with a form, and if he is illiterate, he must be assisted by the office of the Gram Nyayalaya in filling in the form. The same should be placed before the Presiding Judge within 24 hours. A notice accompanied by a copy of the complaint should be served upon the opposite side. If the dispute brooks no delay, the Gram Nyayalaya will be entitled to pass *ex parte* interim prohibitory orders to be enforced within one week within which the Nyayalaya must visit the site and then determine in the presence of both sides whether to continue the interim order for a further period or not. For the final hearing as stated earlier, the Nyayalaya shall ordinarily meet at the situs of the dispute. Having assembled as herein indicated, it may inform the parties there and then as to the nature of the dispute, briefly hear the witnesses and if the lawyers appear on either side, allow a very brief cross-examination and make a short note of it. If lawyers so think, they may make submissions for a period not exceeding a few minutes. If possible, the decision must be rendered there and then. Whatever documents are produced, must be accepted. If any extract from the Government records kept at village level are necessary, the officer in charge of the village records must be sent advance intimation to remain present with the same and he should be asked to supply the records if the Nyayalaya needs the same. The decision of the Nyayalaya will be governed by the principle of justice, equity and good conscience.

The Presiding Judge of the Gram Nyayalaya must control the cross-examination of the witnesses and confine it to specific issues and directly relevant to the point under consideration and should not permit any rambling or fishy examination. In fact, it must be kept as a time bound programme. It will be open to the Gram Nyayalaya to accept affidavits in lieu of oral evidence, if the party so chooses to give. It shall not condemn anyone unheard and minimum principles of natural justice shall be observed in the trial of the disputes brought before it. By minimum principles of natural justice is meant that (1) no one shall be condemned unheard; and (2) no one shall be a judge in his own cause. The decision will always be informed by justice, equity and good conscience. At the end of the trial, if the decision is not by consensus between the parties, the Presiding Judge shall draw a brief statement of the dispute, the evidence led, the decision and the reasons in support of the decision. It shall be signed by all the three Judges. In the event of a difference of opinion, the decision of the majority will be binding. On a question of law, the view expressed by the Presiding Judge shall be binding on the lay Judges.

If it appears to the Gram Nyayalaya while conducting the proceedings before it that the case is one which ought to have been tried by a different court and for which it has no jurisdiction, it may make over the same to the District Court having jurisdiction for transfer of the same to the court having jurisdiction to try the same. Similarly, if some other court has a proceeding before it which ought to be tried by Gram Nyayalaya, the court will forward that proceeding to the District Court having jurisdiction who would transfer it to the Gram Nyayalaya having jurisdiction to deal with the same.

6.9. Upon a receipt of a complaint by an aggrieved person at the office of the Gram Nyayalaya at Taluka/Tehsil level, it shall be placed before the Presiding Judge forthwith, if he is available or as soon as he returns to the headquarter but not later than 24 hours from the time of its receipt. When the complaint is placed before the Presiding Judge, after acquainting himself with the nature of the dispute and the place where the dispute has arisen, the Presiding Judge shall select from the Panel already furnished to him two persons residing as far as possible at some distance from the situs of the dispute and invite them to be the court for the case. If anyone of them discloses an interest either in the dispute or parties to the dispute on a questioning by the Presiding Judge, he should be discharged from the performance of the duty and in his place some other person from the panel should be selected. Where one of the parties to the dispute is a member of the Scheduled Caste or Scheduled Tribe or a woman, the Presiding Judge should as far as possible try to enlist as one lay Judge either a member of the Scheduled Caste or Scheduled Tribe or a woman. They should also be selected for other disputes but in the aforementioned circumstances ordinarily one of them must be a member of the court. A valid charge of bias shall disqualify the member. It would be open to the Presiding Judge to continue the two members so selected even for other cases if they are not otherwise disqualified. All the three would constitute the court and all the three would sit as a court. The decision will be either by consensus or by a majority.

Constitution of the court.

Procedure in criminal proceedings.

6.10. Having regard to article 21 of the Constitution, and further having regard to the conferment of criminal jurisdiction of a fairly extensive nature, a fair procedure has to be devised for trial of criminal cases by procedure prescribed in the Code of Criminal Procedure, 1973, for trial of summons and warrant cases has stood the test of article 21. Lawyers participating in the debate very vehemently stressed that if a bold step of conferring extensive criminal jurisdiction on Gram Nyayalaya is to be taken, a safeguard must be provided that the trial before it shall take place according to the provisions of the Code of Criminal Procedure, 1973. Provisions of the Code of Criminal Procedure, 1973, for trial of offences lean heavily in favour of the accused and more often a real culprit escapes on account of over-emphasis on adherence to procedure. But even with this reservation, as a first step, it is advisable to retain the procedure prescribed in the Code of Criminal Procedure, 1973, for trial of offences before Gram Nyayalaya. The Evidence Act as such *stricto sensu* would not apply. Some of its provisions have literally an inbuilt guarantee for miscarriage of justice. An illustration would convey the message in a cogent manner. Ravi Shanker Maharaj, renowned Gandhian Social worker was carrying on an experiment for improving equality of life in rural areas near Dholka in Gujarat with a view to weaning people away from criminal activities. He had raised a cadre of dedicated social workers. Those who thrived on criminal propensities found the activities of Ravi Shanker Maharaj a hindrance. One of the closest colleagues of Maharaj was murdered. The police appeared on the scene but was not making any headway. In his true Gandhian tradition, he went on fast for change of heart. One evening two persons appeared before him and confessed having committed murder of the social worker. Ravi Shanker Maharaj heard them and requested them to surrender to the police and permit the law to take its own course. Accordingly, the culprits surrendered. Investigation was completed and they were challenged. The case was committed to the Court of Session. In the trial before the Session Judge, Ravi Shanker Maharaj was cited as a witness to prove the extra judicial confession of the culprits as they had retracted their confession. No one, not even the Judge, had any doubt about the truthfulness veracity and credibility of Ravi Shanker Maharaj. He gave his evidence. There was no reason why his evidence should not be accepted. If it were accepted, there would be an iron clad case against the accused. In the cross-examination, the defence counsel did not try to shake the testimony of Ravi Shanker Maharaj. He asked only one question : whether the police was there near the door of the room when the culprits appeared before him and confessed that they had committed murder. The answer was in the affirmative. The provision of section 25 of the Evidence Act was involved and the evidence of extra-judicial confession was ruled inadmissible. The accused were acquitted. Later on, Ravi Shanker Maharaj said that the system of justice as administered by the British rulers had an inbuilt tendency of promoting injustice. Such illustrations can be multiplied. The Commission is, therefore, of the view that the Evidence Act enacted about a century back *stricto sensu* should not apply even in the matter of criminal proceedings before the gram Nyayalaya. However, the trial shall be held according to the procedure prescribed in the Code of Criminal Procedure. An attempt, however, should be made to devise still simpler procedure which may stand the test of article 21 of the Constitution.

Appearance of lawyers.

6.11. There has been near unanimity on the controversial question about appearance of lawyers in proceedings before Gram Nyayalaya. Most of the statutes dealing with Nyaya Panchayats have unequivocally recommended the exclusion of lawyers in the proceedings before the Nyaya Panchayat. Participants in workshops and those who submitted their views, save lawyers, were unanimously of the opinion that lawyers should not be permitted to appear before Gram Nyayalaya. Commencing from the Fourteenth Report of the Law Commission, all other Reports and Committees dealing with the topic have reaffirmed the same view. This Commission wants to introduce a slight departure from the earlier view in this behalf for very weighty reasons.

All the previous Reports of the Commission and the Committees recommended trivial jurisdiction to be conferred on Nyaya Panchayat. Approach now adopted is to confer fairly wide civil and criminal jurisdiction on Gram Nyayalaya, though the disputes in their nature are bound to be simple and uncomplicated. Further, lawyers cannot be excluded from appearance in the criminal proceedings in view of the provision contained in article 22 of the Constitution. Any suggestion to that effect would be violative of the Constitution. The approach should not be to exclude lawyers but it should be to minimise, if not eradicate, their propensity to delay proceedings, formalise the procedure and introduce technicalities. It is the cardinal feature of our Constitution that India is to be a society governed by the rule of law.

Of course, law means not only lawyer's law but law which is defined as common sense. One additional reason for making departure in the matter of appearance of lawyers stems from a further experiment of inducting legally trained persons in the participatory forum. Therefore, the Commission is of the opinion that the parties appearing before Gram Nyayalaya will be entitled to appear through the lawyers of their choice both in civil and criminal proceedings. However, in order to thwart the repetition of the past experience, the appearance will be subject to two specific conditions, namely, (1) Gram Nyayalaya will have no jurisdiction to adjourn the case for the convenience of the lawyers of the party; and (2) the venue of the hearing shall not be changed to accommodate the lawyer. No adjournment will be given to enable the parties to engage the lawyers. Thus all the parties appearing before the Gram Nyayalaya who are desirous of availing assistance of lawyers should make their arrangements in advance. It would be no argument that as one party did not know whether the other party has engaged a lawyer, the matter should then be adjourned to give an opportunity to engage a lawyer. Such an approach must be wholly avoided.

6.12. In order to mitigate any hardship in this behalf, the Commission is of the opinion that the proposed Legal Services Commission for States and Union territories which may be set up under the proposed National Legal Services Act should assign two lawyers to be attached to each Gram Nyayalaya whose services would be readily available to the parties if they so desire. These lawyers would be independent of party influence and would assist as Court officers in disposal of the disputes. As they are attached to the Court, there will be no question of adjournment to suit their convenience. With these safeguards, the Commission favours this retention of participation in the proceedings by lawyers and, therefore, the parties should be permitted to appear through the lawyers of their choice in proceedings before the Gram Nyayalaya. **Legal aid.**

In the criminal proceedings, the accused would be entitled to appear by a lawyer as a matter of right, but the Gram Nyayalaya will have no jurisdiction to adjourn the case to suit his convenience or to shift the venue for the convenience of the parties.

6.13. The Gram Nyayalaya will have power to call for information from any source which is considered necessary for the just decision of the dispute brought before it. While retaining the adversary format, the Gram Nyayalaya should not be handicapped in rendering just decision in the case by the failure of the parties to bring available material before it. At present the court cannot act *suo motu*. In order to remove the present handicap, it is desired to empower the Gram Nyayalaya to adopt, as and when necessary, inquisitorial approach, so that no material which can shed light on the issues arising before it in a dispute, would escape its attention. The Gram Nyayalaya must always remain conscious of its role that more or less it is desired that it should adjudicate the disputes without the assistance of lawyers. Initially its approach must be to bring about reconciliation between the parties by acting almost as a Conciliation Board. But even if it fails to reconcile the parties and has to assume the adjudicatory role, it should not dispose of the dispute by merely saying that the decision is referable to what material is brought before it. It should attempt to adjudicate dispute satisfactorily and conclusively by having recourse to its power to call for material from any source including government records. The Gram Nyayalaya will accordingly have power to : **Power to call for information.**

- (a) enforce the attendance of any person and examine him on oath;
- (b) compel the production of documents and material objects;
- (c) issue commissions for the examination of witnesses; if the witness is unable to appear before it on account of physical incapacity; and
- (d) do such other things as may be prescribed.

6.14. The proceedings before the Gram Nyayalaya shall be conducted in the State language permitting the dialect of the locality to be used. The record of the Gram Nyayalaya shall be maintained in the State language and copies shall be furnished to those who desire the same. This approach will ensure that the litigant will understand what is going on in the court. The decision shall be, if not by consent of the parties, recorded in the language of the court. **Language.**

Court fees.

6.15. There was a lively debate whether court fee should be levied in the proceedings before the Gram Nyayalaya. In the past, the Minister of Law and Justice of the Government of India was an ardent votary of abolition of court fee. Nothing concrete has been achieved in this direction so far. Even the exercise undertaken by the Conference of Chief Justices, Chief Ministers and Law Ministers held in the year 1985 has not revealed a consensus in this behalf. A number of States stoutly opposed the proposal. Those who are votaries of abolition of court fees contend that court fee is a tax on justice and no civilised society can tax justice. Another view was that an indigent person suffers serious handicap in access to justice by not being able to pay court fees. Keeping aside the wider issue of the justification or otherwise of levying court fee, there was near unanimity with the view expressed by the Commission that in respect of proceedings before Gram Nyayalaya, which will be catering largely to the needs of the rural poor, the levy of the court fees would be anachronistic. The approach may not be misinterpreted to suggest that the Commission is against levy of court fees. In fact, the elite and the corporate sector, who use courts for a shadow-boxing in respect of issues which are unreal, heavy court fees should be levied and it must be so high as to make them pay the entire cost of the court establishment. There is nothing new or startling in this suggestion. A beginning has already been made in California (U.S.A.) in this behalf. Having regard to the discernible tendency of corporate sector aggrandising court time arguing non-issues, this view will have to be developed later on. However, in the proceedings before the Gram Nyayalaya, looking to the nature of disputes, the class of litigants, the economic status of the parties ordinarily coming before it, the levy of court fees would be inappropriate. It is the considered view of the Commission that no court fees shall be levied in the proceedings before the Gram Nyayalaya.

Transport.

6.16. If the treble objects behind devising a new forum for resolution of disputes at grass-root level, namely, (1) participatory system of justice; and (2) expeditious disposal of disputes; and (3) justice to be taken to the door-step of the people, have to be realised, it is imperative that the Gram Nyayalaya should have easy mobility. Therefore, every attempt to hold court in a formal manner at the headquarter should be thwarted. If there is not to be any laxity in this behalf, it is essential that a transport vehicle should be provided to each Gram Nyayalaya. As the approach roads in villages may be either fair-weather roads or not in a very good shape, it is essential that a Jeep should be provided to the Presiding Judge of the Gram Nyayalaya. It should be available for all official purposes including the transport of lay Judges. Somehow or the other, it is disconcerting *albeit unpalatable fact that modern technological advances have passed by the Indian legal system leaving it untouched.* Till very recently, even the District Court Judge was not provided with the telephone and even now he is not provided with a transport vehicle. It is time that this shell is broken and the modern gadgets are freely used. Transport is one of the most essential modern gadgets.

Appeal or revision.

6.17. Should there be a provision for a higher level review of the decision of the Gram Nyayalaya? Views were equally divided on both sides but the balance tilted in favour of at least one appeal against the decision of Gram Nyayalaya. The question posed is: whether an appeal would lie against the decision of the Gram Nyayalaya or a limited revision can be permitted on the questions of law by the next higher court. This is a point. The belief that a review of the decision by a higher court ensures justice, lacks foundation. Appeal creates a peculiar illusion in the mind of a litigant against whom adverse decision is rendered. It is no doubt true that even the best of legally trained mind may commit an error. A power of review of decision by an appellate forum also ensures against arbitrary or biased decision. It also ensures against the decision contrary to the well-accepted legal principles. But it has also generated an egocentric activity most especially where the parties are unequal and the weaker of the two parties has obtained a decision in his favour. In such a situation, the opponent who is economically better off considers his defeat, a slur on his status and he has twin objectives in preferring the appeal. He wants to satisfy his ego and simultaneously wants to tire-out the opponent or to put him to such heavy expenditure by way of appeal and further appeal that the pursuit of justice becomes a mirage.

A provision of an appeal by itself is no guarantee of a just decision. It has some supervisory flavour. An assumption that an appeal to the higher court ensures justice is wholly misleading. Numerous cases can be cited in which the plaintiff won in the trial court, lost in first appeal before the District court, won in second appeal in the High Court and lost in the appeal by his opponent in the Supreme

Court. Which of the four is a just decision. And it is a trite saying in the corridor of courts that if a higher forum for appeal against the decision of the Supreme Court is devised, the Judgement of the Supreme Court there is ever likely of it being reversed. After all it said and done, a total eradication of a subjective point of view in decision-making process is wholly impossible. Coupled with that is the fact that while interpreting socially beneficial legislation, the social philosophy and value system of the Judge at various levels in the hierarchy of courts plays an important part in decision making process. How can one explain the reversal of numerous decisions of the High Court by the Supreme Court, and how can one explain the reversal of the decision of the Supreme Court by its larger Bench ? This proves, if proof was needed, that there is an element of subjectivism in all decision making process. It has to be curtailed, controlled, restrained and as far as possible eliminated. Having said that it must be confessed that it looms large for whatever worth it is. It is equally fallacious to assume that the errors are not committed at higher level. Number of decisions of the Supreme Court can be cited to substantiate the proposition that the decision of the trial court which was set aside by the High Court was restored by the Supreme Court. It can, therefore, be said with confidence that a provision for appeal is not a guarantee of justice nor a bulwark against arbitrary or biased decision.

It is equally true that no one is infallible. The court of appeal accordingly has been described a court of error. Therefore, its jurisdiction has been held to be co-extensive with the trial court. It was said that atleast there must be one forum which must have power to correct the errors of newly created forum of Gram Nyayalaya.

In the past when the Nyaya Panchayat enjoyed very limited jurisdiction, there was near unanimity of opinion that no appeal should be permitted against its decision. A revision by the next higher court was generally provided. Its net effect has been, as pointed out earlier, in the view expressed by Punjab¹ and Madras High Courts² is to completely strangle the Nyaya Panchayat. Literally, every decision save the one arrived at by consent of parties of Nyaya Panchayat was interfered with thereby destroying the confidence of lay judges in their ability to render decision and the confidence of litigants. In some of the Judgements, severe strictures were made against the lay Judges composing the Nyaya Panchayat. This was one single major reason why the entire experiment of Nyaya Panchayat was stillborn.

It was further said that now that a very wide jurisdiction is being conferred on the Nyaya Panchayat, atleast one appeal should be provided for. The Law Commission has considerable hesitation in making a provision for appeal against the decision of the Nyaya Panchayat in any matter save the criminal cases in which substantive sentence is imposed as the past experience of appeals over appeals not permitting a final decision to be arrived at in the lifetime of the litigant as revealed in the Bleak House by Charles Dickens stares in the face.

As the Gram Nyayalaya ensures to some extent a trial and decision by one's own peers or compatriots, attempt must be made to generate faith in their decision making process. Experience also teaches us that a forum for appeal cannot necessarily cure all errors. It may, in fact, introduce or multiply errors. Again provision for appeal against a decision of a body composed amongst others of lay Judges to a body consisting of a Judge alone, would introduce an inner contradiction. The last apprehension is that once an appeal is allowed, it would strike at the root of the decision by consensus which ought to be the primary object of Gram Nyayalaya. Therefore, having regard to all these circumstances, the Commission is of the opinion that no appeal would lie against any decision of the Gram Nyayalaya except the one in which at the end of a criminal trial a substantive sentence is imposed.

Another view expressed was that if the Commission is not in favour of providing an appeal against the decision of Gram Nyayalaya, in order to correct possible errors of law which, if not corrected, would affect subsequent decisions by the same Gram Nyayalaya, a provision should be made for a revision on a question of law involved in the decision of Gram Nyayalaya and the forum for the same must be the District Court. The Commission is not unaware of the fact that even this is a danger signal. Prior to its deletion by Code of Civil Procedure (Amendment) Act, 1973 (49 of 1973), Sec. 110 incorporated the expression 'substantial question of law'. Sec. 30 of the Workmen's Compensation Act, 1923, provides that the appeal shall

¹ *Marwa Manghani vs. Sanghram Sampat*, AIR 1960 Punjab 35.

² *Venkatachair Nuteker vs. The Panchayat Board of Ethapur*, AIR 1963 Mad. 388.

not lie against any order unless substantial question of law is involved in the appeal. Whenever an appeal was preferred limited to a substantial question of law, a very interesting debate ensued : what constitutes a 'substantial question of law' ? There is no dearth of precedents in which it was held that a perverse appreciation of evidence, or no reasonable person would ever come to the decision which is under appeal or a construction of a document by itself without anything more is a substantial question of law. One has, therefore, to tread warily because a limited jurisdiction, by process of interpretation, can be widened to defeat the very purpose of conferring limited jurisdiction.

Some compromise has to be arrived at, which would guard against proliferation of litigation from court to court and a valve to provide an escape route against the dissatisfaction arising from a palpable error in a decision by Gram Nyayalaya.

The Commission is of the opinion that a revision petition to correct errors of law which had affected the decision of the Gram Nyayalaya to the District Court of the district in which Gram Nyayalaya is functioning would meet the requirement. The revising court may correct the errors in a revision petition filed by a party against whom adverse decision is rendered. But if error of law has not substantially affected the decision of the case, the same shall not be interfered with. The errors of law are to be corrected to guard against future repetition. It would not be open to the court exercising revisional jurisdiction to interfere with the decision of the Gram Nyayalaya on the ground that if the revisional authority would have appreciated questions of fact, it would have come to a different conclusion. Only errors of law can be corrected by this revisional forum. Even if it comes to the decision that another view is possible, it would have no jurisdiction to interfere with the decision of the Gram Nyayalaya. A decision by the peers should not be interfered with by a court presided over by a judge approaching the matter from a purely technical legal approach. This limited revisional jurisdiction should be conferred to correct patent errors of law or to prevent miscarriage of justice. The Commission accordingly is of the view that a revision petition would lie against substantial question of law involved in the decision of the Gram Nyayalaya to the District Court within whose jurisdiction the Gram Nyayalaya is functioning.

To put the matter beyond the pale of controversy, no revision would lie against the decision of the revisional authority or against the decision of the Gram Nyayalaya to the High Court under sec. 115 of the Code of Civil Procedure or Art. 227 of the Constitution. Both the jurisdictions will have to be extinguished by appropriate amendment.

An appeal would lie to the Sessions court against the decision by Gram Nyayalaya in a criminal case in which the Gram Nyayalaya has imposed substantive sentence of imprisonment. The appeal would lie both on questions of fact and of law. The appeal should be dealt with according to the provisions of the Code of Criminal Procedure applicable to the appeals entertained against the decision of a Judicial Magistrate, First Class. Any other view is likely to infringe article 21 of the Constitution.

Ouster of the jurisdiction of courts.

6.18. The jurisdiction conferred on the Gram Nyayalaya is exclusive to the extent that in respect of matters covered by the jurisdiction conferred on the Gram Nyayalaya, the jurisdiction of any other court is ousted. To put the matter beyond pale of controversy, the jurisdiction conferred on Gram Nyayalaya is not optional as was in the case of Nyaya Panchayat of the yester years. In order to avoid conflict of jurisdiction, the exclusive jurisdiction in respect of matters herein specified is conferred on the Gram Nyayalaya and to that extent correspondingly, the jurisdiction of the civil court and criminal court is ousted and excluded.

Execution of the orders of Gram Nyayalaya.

6.19. It has been repeatedly observed that by superior courts and critics of the court system that Order 21 (Execution of Decrees) of the code of Civil Procedure 1908, is a heaven for lawyers. It is a trite saying that the trouble of the decree-holder starts after he obtains a decree. Execution proceedings last over decades. In certain types of suits, a preliminary decree has to be passed : *to wit* in a suit for dissolution of partnership and accounts (Order XX, rule 15), in a suit for redemption of mortgage (Order XXXIV, rule 7) and similar other cases. A preliminary decree is appealable. Therefore, till the highest court confirms the preliminary decree, further proceedings are virtually frozen. Then a final decree is made and the gamut starts all over again. If the final decree provides for portion of revenue paying estate, the decree has to be sent to the revenue authorities for effecting partition. It has

become a cruel joke that in a contested suit, the fruits of the decree are not available in the lifetime of the litigant. To avoid such a calamity befalling the Gram Nyayalaya and in tune with the spirit of its functioning, a simple method for execution of its order must be provided for. The nature of the execution would depend upon the relief granted by the decision of the Gram Nyayalaya. If the relief granted is carving out a passage either to the field or to the courtyard for men, cart or cattle, while rendering the decision, the Gram Nyayalaya must take effective steps with the assistance of the revenue authorities to demarcate and carve out the passage and injunct any one from interfering with the same. Similar procedure can be followed for providing water channels, use of common pastures, partition and division of ancestral property. In other words, depending upon the relief granted, the fruits must be made available forthwith in or soon thereafter. What is to be borne in mind is not that a dispute has been adjudicated-upon by the Gram Nyayalaya but the wrong-doer has been made to part with his wrongful gain. No prayer for granting interim stay till the party aggrieved by the decision prefers a revision petition should be entertained.

Undoubtedly, there will be some decisions of Gram Nyayalaya the execution of which may entail some delay. In the case of a money decree, it would be open to the Gram Nyayalaya to grant payment by instalment. If it becomes necessary to attach and sell property for recovering the dues payable under the decree, the Gram Nyayalaya shall proceed expeditiously. The sale has only to be advertised in the Tehsil and no elaborate proclamation of sale need be drawn-up. The effort must be to finally dispose of the dispute by granting the benefit provided for in the decision.

All authorities of the revenue department operating at village and Tehsil level, all police authorities at both the levels, forest authorities operating at both the levels should be put under obligation to assist the Gram Nyayalaya in discharging its functions and performing its duties. Failure on the part of any such authorities shall be treated as misconduct and a Gram Nyayalaya should be empowered to take effective action against such defaulting authority.

A simple code providing for various matters in connection with the functioning of the Gram Nyayalaya may have to be drawn-up. The State Government in consultation with the High Court may enact simple rules in this behalf so that a uniform pattern of functioning of all Gram Nyayalayas can be achieved.

6.20. India is a society governed by rule of law. It is an accepted maxim Liaison Officer. that the society should be governed by laws rather than by men because even the best of men can in a given situation act in an arbitrary manner. Art. 14 of the Constitution guarantees equality before the law and equal protection of laws. At the dawn of independence, Indian society was a feudal society vertically hierarchical in character and more or less based on exploitation of class by class. The Constitution envisages an egalitarian society in which justice, social, economic and political will inform all the institutions of the national life. Basic transformation of the society was to be brought about by law. Sociology of law thus acquired a dominant consideration.

Numerous laws have been enacted towards equitable redistribution of wealth, abolition of caste domination, eradication of untouchability, removal of poverty etc. Numerous laws have been enacted for the amelioration of the conditions of the rural poor. Part IV of the Constitution has now received its legitimate recognition⁽¹⁾. If by mere enactments of laws, a basic transformation of the society can be ushered in, this country should have achieved its goal long back. It has now dawned on all concerned that mere enactment of laws is only the first step in the direction of social transformation.

After the requisite laws are enacted, the execution and implementation of the same is the next step, in order to undertake effective implementation of laws, the knowledge of the benefits, rights and duties enacted in the laws must percolate down to the persons to whom these laws would apply. Our advance towards free compulsory primary education and expansion of adult educational programmes has been shown to be halting. There is still a large segment of society who can be styled as illiterate. Enactment of laws have still a colonial flavour. Knowledge of law is the preserve of technocrats, namely, judges, lawyers and Law academics. The unfortunate fall-out of this situation is that those for whose benefit the laws are enacted have no knowledge of these laws. Legal literacy and legal awareness are recent phenomena.

¹ Art. 31C of the Constitution.

If people for whose benefit the laws are enacted are unaware of it, it is not possible to expect them to claim the rights conferred by the laws or agitate for the same. Even if knowledge of rights grow upon them, they have to take steps to translate the benefits into reality. Different types of courts have been devised as media for implementation of the laws. It is a sad experience noted by numerous authors on the subject that for want of legal literacy and awareness of rights the beneficiaries of laws have taken no steps to enjoy the benefits. The result has been that while the statute book shows numerous laws enacted for the benefit of the weak, the down-trodden and the needy, in terms of benefit, the balance sheet is highly unsatisfactory.

The question that must be posed is : why this has happened ? Two things stare in the face. The first is, as stated earlier, want of knowledge about rights but the second and the worst is incapacity to take recourse to litigative process to enjoy the benefits of the rights. This report at this stage is concerned with the second part.

A discernible tendency which has attracted the attention of sociologists and social workers is that the rural poor are reluctant to approach the court. The reason for this reluctance appears to be that the litigative process is so expensive, so formal, highly technical and dilatory that a daily bread-earner can ill-afford the luxury of it. The second disturbing reason that manifested itself is that the fight between the seekers of the benefit of law and one from whom the benefit is to be snatched is so grossly unequal that in the end on account of the class structure of Indian Judiciary, the member of the weaker section is generally the loser. By the combined operation of these two formidable reasons, it appears that the rural poor are ill-equipped to enjoy the benefits conferred by the laws. In such a situation, enacting the law becomes at best a paper exercise or at worst a cruel joke.

Even when a highly informal forum is set up at the doorstep of the consumer of justice, it is feared that that by itself would not allay the apprehension of the rural poor in seeking redress by recourse to court. If an individual suffers some harm, occasionally, he takes courage to seek redressal of the wrong done to him. But when it comes to mass violation of group rights, the scenario is distressing. Organised labour may have shown a tendency to vindicate its rights. The concern of this report at this stage is about the rural poor who are generally unorganised and who are ill-equipped to have recourse to court. Should the Commission overlook such gross violation of group rights ? Should it wait for groups to awaken themselves and approach the court ? If it does not come about, should the society fold-up the hands and turn a blind eye to such violation of group rights ?

The Commission is of the opinion that time has come where a mechanism must be provided for invoking the courts' jurisdiction for redressal of violation of group rights. The group may be mobilised to take recourse to the forum. Even if the group cannot be mobilised on the ground that it is defused and scattered, it must be treated as a State obligation under Part IV of the Constitution to set up an authority whose duty is to move round villages regularly and as soon as it comes across violation of individual or group rights, on their behalf, to take recourse to the court. A Liaison Officer must accordingly be appointed, posted and attached to each Gram Nyayalaya, who would not be a part of the Gram Nyayalaya.

It would be the primary duty of the Liaison Officer to tour villages within his jurisdiction regularly, to contact people belonging to poorer strata of the society, to ascertain from them whether certain benefits which have been conferred by the statutes are made available to them, to collect data where breach comes to his notice and then motivate the group to have recourse to the Gram Nyayalaya and failing which to himself becomes the petitioner on behalf of the deprived group to seek the benefit. A statutory provision shall be made not permitting his *locus standi* to be questioned by the party against whom the action is commenced. When such a dispute is brought before the court, Gram Nyayalaya will have power to call for information from experts, records from the concerned government department and assistance of non-governmental social service organisations. The Gram Nyayalaya must be empowered to seek assistance of any institution or organisation operating within its jurisdiction for carrying out welfare activities for the benefit of the rural poor. Accordingly, a Liaison Officer with a legal background should be appointed and attached to each Gram Nyayalaya.

The State Government shall draw up a list of non-governmental voluntary organisations operating in rural areas for carrying on welfare activities for the benefit of the rural poor. The information shall include the names of office-bearers, object

for which the organisation has been set up and its speciality in the field of welfare activity. Every Gram Nyayalaya will be furnished a copy of the same. It would be open to the Gram Nyayalaya to enlist services of the office bearers or other workers of the organisation to assist it in bringing about the reconciliation between parties before the adjudication proceeding is undertaken. The list can also be useful in selecting the Panel of lay Judges. This will make the participatory process far more effective.

CHAPTER VII

CONCLUSION

Conclusion.

7.1. While assigning the work of the judicial reforms to us, the Minister for Law and Justice, Government of India, informed us that—

“the problem of delays and arrears in Trial and Appellate Courts has, over the years, assumed serious proportions. The extent of pendency of cases in various courts in the country is very high. Increase in the number of Judges has not been able to halt the mounting arrears in the courts. The recommendations made in the past by various bodies, like the Law Commission and the High Courts Arrears Committee (Committee presided over by Justice J.C. Shah, former Chief Justice of India), have been found to be inadequate to effectively deal with the rigidities and dilatoriness of court procedures. A fresh approach is necessary to examine to which extent decentralisation and other changes in the Constitution and functioning of the courts should be brought about and what basic changes in structure and procedures should be devised to eliminate delays in the disposal of cases of all categories pending before all courts”.

As a matter of fact, he, way-back in 1958, in the course of a discussion in the Rajya Sabha, had also observed:

“There is no doubt the system of justice which obtains today is too expensive for the common man. The small dispute must necessarily be left to be decided by a system of Panchayat justice—call it the People’s Court, call it the Popular Court, call it anything—but it would certainly be subject to such safeguards as we may devise—the only means by which for ordinary disputes in the village level the common man can be assured of a system of judicial administration which would not be too expensive for him and which would not be too dilatory for him”.

Since then the situation has worsened considerably.

The Law Commission, free from pre-possession and any prejudice, probed into an hitherto unexplored region in search of solution which must have both newness and utility. The search ends here. There is no attempt to claim originality. A solution may appear to be a synthesis between old values of lasting durability and new values which require to be enthroned in the field of judicial administration. Talking, discussing, deliberating and provoking a discussion, helped us in understanding the existing infirmities. Care has therefore, been taken to devise the forum in which, at any rate, the existing infirmities will have no entry door to corrupt it. Restructuring a system while reforming it permits retention of the acceptable part and rejection of the redundant. That was the approach we set out with and we are concluding in the hope that a start may be made, even if need be, as an experimental measure, in selected areas in every State to give the recommended system the chance to prove its credentials. A watchful observation in the initial stage will help in removing impediments that may appear in the process of implementation. The law Commission would always be available to amend, reform and revise, if need be, to make the system effective in the service of the people for whom it is devised.

(D.A. DESAI)

Chairman

(V.S. RAMA DEVI)

Member Secretary

New Delhi, dated the 12th August, 1986.

APPENDIX I

**LAW COMMISSION OF INDIA
WORKING PAPER
ON
ALTERNATIVE FORUM FOR RESOLUTION
OF DISPUTES AT GRASS-ROOTS LEVEL**

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CHAPTER I INTRODUCTORY

1.1. Amongst the terms of reference of the Law Commission, high priority ^{Genesis.} deserves to be accorded to the first term, namely, "to keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the time".

Of late, the delay in the disposal of cases and the consequent arrears in all the courts had been the subject of discussion at various forums and a number of suggestions, including changes in the system of administration of justice, have also been made. The Law Commission has also dealt with this aspect in a number of reports. In view of the importance of the subject and the need for speedy administration of justice, the Law Commission has decided to examine this subject in all its ramifications on its own and submit a report.

1.2. Keeping in view the historical perspective of a number of attempts made in the past by various Commissions making elaborate, well-considered and valuable suggestions for re-structuring the justice delivery system so as to make it effective, cheap, speedy and people-oriented, attention of the Commission was drawn to the earlier reports being Fourteenth, Twenty-Seventh and Seventy-seventh Reports of the Law Commission. ^{Previous reports of Law Commission and other Committees.}

1.3. The Fourteenth Report exhaustively dealt with the question of reform of judicial administration. It took notice of the fact that 'the post-independence period witnessed a powerful demand for a complete re-orientation of the legal and judicial systems of the country.¹ The response to this powerful demand was the setting-up of the First Law Commission in 1955. By a resolution which specifically refers to the functions of the Law Commission amongst others to devise ways and means to realise that justice is simple speedy, cheap, effective and substantial.² 'The judicial system introduced by the empire builders is unsuited to the Indian conditions and is something alien transplanted on the Indian soil.³ In order to answer this query, an attempt was made to find out whether there is any indigenous justice delivery system. In the Fourteenth Report of the Law Commission after observing that 'in suggesting ways and means for the improvement of our present system of judicial administration, it does not preclude us from considering radical and revolutionary measures which may make it more suitable to our needs' expressed its opinion 'that the way to reform does not lie in the abandonment of the present system and in replacing it by another. The true remedy lies in removing the defects that exist in the present system and making it subserve in a greater degree our requirements for the present and the future.'⁴ Accordingly, the criticism that the justice delivery system then in vogue (1955-58) was not in accord with the genius of the country, was rejected as being without any substance. Having thus reached an affirmative conclusion that the system requires to be remedied, but not replaced even in parts, though calling for revolutionary measures to make it more suitable to the needs of the time, the Commission recommended certain changes. ^{Fourteenth Report of the Law Commission.}

1.4. The exercise was again taken in 1978. The Commission took note of 'the criticism that the present system of administration of justice is not suited to the genius of our people, is based on the ground that our society basically is an agrarian society not sophisticated enough to understand the technical and cumbersome procedure followed by our courts.⁵ The conclusion reached was that 'the present system is not a product of one day and that it will be a retrograde step to revert to the primitive method of administration of justice by taking our disputes to a group of ordinary laymen ignorant of the modern complexities of life and not conversant with legal concepts and procedures.' There appears a lurking respect for the system as it is administered, coupled with a fond hope that 'the real need appears to be to further improve the existing system to meet modern requirements in the context of our national ethos and not to replace it by an inadequate system which was left behind ^{Seventy-seventh Report of the Law Commission.}

¹LCI *Fourteenth Report*, Vol. I, Ch. 2, para 12, p. 15.

²Lok Sabha Debates : Vol. III Part II, 1954 columns 1860, 1861.

³LCI, *Seventy-seventh Report*, para 3.1, p. 7.

⁴LCI *Fourteenth Report*, Chapter 4, para 20, p. 31.

⁵LCI *Seventy-seventh Report*, Chapter 3, para 3.3, p. 7.

long ago.⁶ There was, however, a body of contrary opinion which unmistakably felt that 'the British system of administration of justice in our country has not been an unmixed good.....it has also, at the lowest level, alienated the people from the system because of its foreign origin, technicality, extreme formalism, rigid rules of procedure and relevance and foreign language. It has, at the village level, and even at the level of taluka towns, remained as alien system which has no living contact with the masses and is not meaningful to them.'⁷

⁶LCI *Seventy-seventh Report*, Ch. 3, para 3.20, p. 10.

⁷*Report of the legal Aid Committee*, (Govt. of Gujarat) 1971, para 13.12, p. 209.

CHAPTER II

NEED FOR RESTRUCTURING THE JUDICIAL SYSTEM

2.1. Let it not be forgotten that for *pax britannica* the colonial masters inducted in India by and large, the judicial system in vogue in their country. One does not build-up an empire for some altruistic purpose. If charity begins at one's own home, empire begins at the home of other people. Amongst various motivations, the one central to the empire building is economic exploitation of the colonies for ensuring higher standard of life of the elite of the ruling masters. This economic exploitation necessitates internal peace and external security. Internal peace is guaranteed by first maintaining a foreign military, loyal police and legal justice system which would keep the parties continuously litigating in law court with hierarchy of appeals so that the Indian illiterate, the victim of injustice struggles through the labyrinths of courts and loses all initiative for settling the dispute by resort to force, is drained of all his vitality and physical power to assert his rights and his economic wherewithal in paying for the costs of litigation and his political will by loss of precious time in the litigating processes. *Jarndyce v. Jarndyce* (Charles Dickens) is the ideal set forth to the seekers of justice. If people complaining of injustice remain glued to the court, they do not disturb law and order, maintain peace and permit naked economic exploitation and the beguiled and the believers and the beneficiaries (Legal profession) go on paying tribute to British system of justice.

Reasons for inducting the alien system in India.

2.2. This reverence of an entrenched few for the system thwarted every move for its re-structuring. While admitting on all hands in 1958 and 1978 that the system has been over-reached, dilatory, expensive and injustice-ridden, the will to suggest basic changes did not manifest itself. In between, efforts were made to rejuvenate it by suggesting some reforms so as to reduce the time in obtaining justice, to clear backlog of arrears, to make it comparatively less expensive so that the criticism against it can be met to some extent.

Basic changes not manifested in the past.

2.3. The question we must pose is : have these efforts yielded results ? The answer is emphatically in the negative. The mounting arrears⁸ (1237566 cases were pending in the High Courts as on 31st December, 1984), in various high courts and the ever-rising graph of arrears in the Supreme Court of India will affirmatively establish that all this tinkering at the fringes have not only not yielded the desired results, but have in fact aggravated the situation. The consumers of justice have been patiently waiting since the setting up of the Law Commission in 1955 till today for restructuring the system so that it may become both justice and people-oriented.

Failure of earlier efforts.

2.4. The task is gigantic and has to be tackled in parts. It is proposed to deal with a radical restructuring in the matter of resolution of disputes at grass-roots level.

Working paper on restructuring at grass-root level.

2.5. India lives in its villages. 80% of the population reside in what are described as rural areas, seven lakhs villages accommodate 80% of the population.

Rural Majority.

2.6. The disputes arising in these rural areas have a distinct local rural flavour. The irony is that these disputes are sought to be resolved by a procedure uniformly applied from the small village to metropolitan areas like Bombay, Calcutta, Madras, Delhi, etc. Disputes involving crores of rupees, raising intricate questions of law and constitutional issues of far-reaching importance on the one hand and possession of petty occupancy, minor dispute as to passage to the field, dispute as to location of irrigation channel, dispute as to a share in a small occupancy land on the other hand are all dealt with by the same cumbersome procedure prescribed by the Code of Civil Procedure, 1908, as amended from time to time. Is this not an anomaly ? Does it need a change ? Reform of substantive law may be kept aside for the time being because according to Prof. Michael Zander of the London School of Economics 'what matters in the matter of law reforms is the cheapness, accessibility, and expedition of the legal process; that the substantive law is of less importance than the procedural law'⁹. This paper proposes to suggest restructuring of dispute resolution mechanism at grass-roots level in respect of disputes arising in rural and semi-urban areas.

Cumbersome provisions of C.P.C. not suited for settling rural disputes.

⁸. Information supplied at the Conference of the Chief Justices of the High Courts, Chief Ministers and Law Ministers of the States held in September, 1985.

⁹. As quoted in Lord Scarman "*Law Reforms in a Democratic Society*" (1985) p. 31.

Nature of disputes in taluka/tehsil Courts.

2.7. A cursory examination of the institution of cases in taluka/Tehsil courts variously described as court of Munsif/District Munsif/Civil court (Junior Division), etc. reveal the following broad classification of the nature of disputes :

I. Civil Disputes

Disputes arising out of implementation of agrarian reforms and allied statutes.

- (i) Tenancies-protected and concealed and contested.
- (ii) Boundry disputes and encroachment.
- (iii) Right to purchase.
- (iv) Use of common pasture.
- (v) Entries in revenue records.
- (vi) Regulation and timing of taking water from irrigation channel.
- (vii) Disputes as to assessment.

II. Property Disputes

- (i) Village and farm houses (Possession).
- (ii) Sehan.
- (iii) Easements : Right of way for men, cart and cattle to fields and courtyards.
- (iv) Water channels.
- (v) Right to draw water from a well or tubewell.

III. Family Disputes

- (i) Marriage
- (ii) Divorce
- (iii) Custody of children
- (iv) Inheritance and succession-share in property.
- (v) Maintenance.

Stakes in disputes disproportionate to relief claimed.

2.8. If the stake involved in each of the disputes falling under any of the heads herein above enumerated is evaluated in forms of cost benefit analysis, it would appear to be fairly disproportionate to relief claimed and disputed in the litigation though to the parties concerned, that may appear to be of some considerable importance. These disputes at present land in the court of the lowest denomination, namely, Munsif/Civil Judge (J.D.) or Revenue Officer. They have to be processed according to the procedure prescribed in the Civil Procedure Code or in respect of disputes falling under revenue jurisdiction, according to the code prescribed for processing disputes of this nature. Civil Procedure Code has been universally accepted as formal, hyper-technical, dilatory, time-consuming and prolix. Occasionally the procedural wrangles outweigh the real dispute whose resolution is pushed aside and acquires a secondary importance. In what manner can one appreciate the 1576 judgements upto 1971 rendered by the Supreme Court on various topics under the Code of Civil Procedure touching purely procedural aspects such as amendments of pleadings, framing of preliminary issues, interim injunctions, framing of issues, discovery and inspection, etc. Some of the afore-mentioned disputes are simple and wholly uncomplicated and can be disposed of in a few hours more so if handled at the spot. In an adversary system, spot resolution of disputes is generally frowned upon. The Judge must sit at an ordained place where parties must go with the lawyers, witnesses and documents and the Judge hears both the parties after all the formalities prescribed at various stages in the Code of Civil Procedure are gone through and then leisurely decides the disputes. The average duration for disposal of such cases noticed in the year 1954 varied from 369.8 days in Assam to 762.6 days in Bihar.¹⁰ 'A total number of original civil suits pending at the end of the year 1954 was 6,12,635.'¹¹ 'The total number of suits and miscellaneous cases pending in the subordinate courts on 31st December, 1977 was 21,09,986.'¹² The average duration now exceeds three years.

Too much involvement in procedural wrangles.

Defects in the present adversary system.

¹⁰. LCI *Fourteenth Report*, Vol. I. Ch. 11, para, 7, p. 261.

¹¹. *Ibid* para 3, p. 253.

¹². LCI *Seventh-seventy Report*, p. 69.

In between 1954 and 1977, the Law Commission submitted three reports recommending changes in the Civil Procedure Code for reducing the delay in the disposal of cases. The figures hereinabove extracted tell their own tale. And all throughout the effort was to suggest radical changes in the Civil Procedure Code.¹³ A very cautious approach adopted in recommending amendments and modifications in the Code of Civil Procedure by the Law Commission of India in its Twenty-Seventh Report was replaced by a proposal to suggest radical changes and 'caution was not to act as a constraint where the expenses of procedure and the necessities of the times require radical changes.'¹⁴ The exercise was specifically undertaken to make available justice to the consumers at a price they can afford. It was accepted that "an expensive procedural system is a self-defeating instrument of justice."¹⁵ The Fifty-Fourth Report recommended numerous amendments in the Code of Civil Procedure, 1908. This led to the enactment of the Code of Civil Procedure (Amendment) Act, 1976. Several alterations have been made in the then existing provisions of the Civil Procedure Code and new provisions have been added based on the recommendations made in the Fifty-Fourth Report. The Amendment Act came into force on February 1, 1977 except certain sections. Accordingly, the exhaustively amended Code of Civil Procedure designed to reduce the time spent in disposal of suits and to make the system speedy, effective and less-costly, has been in vogue for over 8 years. It is acknowledged on all hands that apart from making no impact in the manner, method and mode of resolution of disputes, it has proved to be counter-productive.¹⁶ The powerful impact which the justice delivery system has on a vast number of citizens has to be taken note of so that it may be properly appreciated that the reform of the system is a matter of vital importance 'not only to the lawyer and the Judge, but also to the State and average citizen.'¹⁷ The priority thus delineated has to be reversed and the true test would be the pains and gains of the average citizen, the consumer of justice. The harsh *albeit* unpalatable outcome of this bizarre exercise cannot be washed away in that by keeping the structural part of the Civil Procedure Code intact and tinkering with it at various places would not be conducive to making the system resilient, effective and responsive to the felt needs of the times. The inescapable conclusion thus is that a basic structural change in the mode, method and forum for resolution of disputes is the *sine qua non*, before the system is engulfed by its own debris.

2.9. It would be unwise to look at the problem from the point of view of court management only. In other words, it would be very imprecise to examine the matter from the aspect of ever-growing court dockets. Such an endeavour has to be guided by the aspirations proclaimed in the Constitution of India. Article 39A of the Constitution of India directs the State to secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This is the constitutional imperative. Denial of justice on the ground of economic and other disabilities in nutshell referred to what has been known as problematic access to law. The Constitution now commands us to remove impediments to access to justice in a systematic manner. All agencies of the Government are now under a fundamental obligation to enhance access to justice. Article 40 which directs the State to take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government, has to be appreciated afresh in the light of the mandate of the new article 39A.

2.10. How does one develop an approach to access to justice contemplated by article 39A? Hitherto, as we will shortly note in our discussion of the organization of Nyaya Panchayats, the dominant consideration has been to ameliorate the burden on the court-system, not so much to prevent denial of justice to any citizen by reason of economic or other disabilities. The command of article 39A now is to focus on these disabilities and to develop schemes for their removal. The managerial consideration of ameliorating the burdens on court-system through creation of local fora for dispute settlement cannot predominate any longer.

¹³. LCI Fifty-Fourth Report, Ch. I, para 1.5, p. 2.

¹⁴. *Ibid.*

¹⁵. *Ibid.*, para 1.6, p. 2.

¹⁶. Judges with vast experience of the handling of civil litigation from grass-root level brought their experience into making recommendations and this empirical research helped them in recommending extensive amendments in the Code of Civil Procedure. These recommendations as suggested were largely accepted but pursuant to their implementation, the outcome is the most undesirable which could not have been foreseen.

¹⁷. LCI Fourteenth Report, Ch. 3, para 1, p. 17.

Disabilities in the Indian legal system.

2.11. The other disabilities referred to in article 39A, distinct from the economic disabilities, are assuredly difficulties posed by the existing profiles of the Indian Legal System. This system, as has been pointed out, itself imposes disabilities on people in their quest of justice. The disabilities arise because of lack of suitable local fora for dispute handling and an emphasis on professionalized justice. The renovation of the system, now contemplated by the Constitution, requires us to remove these disabilities. The professionalized model of justicing cannot be extended to Bharat, not merely because India has about 2,50,000 lawyers only but also because bulk of them are located in urban areas and given the voluntary nature of the profession, it is at this stage not possible through the law to plan their dispersal in a manner which would adequately and equitably serve the needs of the Indian masses. Such a measure ought to be atleast proposed and discussed. But, for the time being we accept the realities as they are.

Alternative system.

2.12. If professionalized model of justice delivery thus cannot be extended to meet the legal needs of the Indian masses, it becomes incumbent to consider alternatives. The alternative is deprofessionalized model of justice. In this model, the indigenous juristic potential of the people, including their own sense of justice, is allowed room for development. This has been sought to be done through people's participation in justice.

Re-structuring start at grass-root level.

2.13. Any pyramidic structure to survive must have strong foundations. The re-structuring must, therefore, start from the bottom and then move vertically upwards. The edifice of the present day justice delivery system is hierarchical in character. At the bottom, there are grass-root courts variously designated as Munsif/District Munsif/Civil Juge (JD) courts. The litigants come primarily in direct contact with these grass-root courts. The view of the system at this level shapes the general evaluation of the whole system. Petty disputes arising in rural areas are brought to these courts for their speedy and effective resolution. If a new mode and method is devised for resolution of such petty disputes, it will account for 75% of the litigation being dealt with in a speedy, effective and less-costly non-cumbersome manner. It has an impact on vast masses. If the disputes brought to the grass-root courts are settled by a less formal or informal speedy procedure and more or less on the spot with people's participation, the feed stock for appeals will be substantially reduced. While devising such a forum coupled with a less-formal procedure, care has to be taken of not disturbing the susceptibilities of the rural population about their confidence in the court system. In devising such a system, attempt must be made to combine the best from all sources. The resolution of each and every dispute does not call for the expertise on the technical aspects of substantive law. Settlement of disputes arising in a locality by a body of laymen of the locality is almost universally recognised. Number of such institutions all over the world may be briefly noticed to substantiate this statement.¹⁸ The institution of Justice of the Peace in England and United States of America, 'Peoples Court' in USSR and with minor variations in all Eastern European countries and the Institution of Lay Justice all entail people's participation in the administration of Justice. Yugoslavia 'is making an attempt in the direction of setting-up exclusively lay tribunals more or less based on the ideology similar to that underlying our Indian Panchayats.¹⁹ So is the remarkable experience of Hungary in the System of People's Assessors.²⁰ The concept of lay participation in judicial decision making made its appearance centuries back and it "began with the appearance of a 'third party' who establishes the ransom following the periods of self judgment or blood feud".²¹ Mediation model for settling disputed issues developed when and where the third party intervening in the dispute had sufficient prestige and power to enforce decision, ransom indicated State intervention, private injury became public injury which assisted the process under which passing judgment became a state function.²² In some form or the other, lay local participation in the mode

New and better method for resolution of petty disputes in rural areas would result in the majority of cases being dealt with in a speedier and cheaper manner.

People's participation in the administration of justice.

¹⁸. The Institution of 'Justice of the Peace' in U.K. dealing with the greater part of criminal jurisdiction and a small but not unimportant part of civil jurisdiction 'is the wonder of all foreigners for nothing like it exists in any other part of the world'. 'With few exceptions, this institution has worked quite satisfactorily and it is quite cheap; C.K. Allen, *The Queen's Peace* (The Hamlyn Lectures, Fifth Series, 1953), p. 178.

¹⁹. *Report of the Study Team on Nyaya Panchayat*, Government of India Ministry of Law (April 1962), Ch. III, para 16, p. 29.

²⁰. See Kalman Kulscar : *People's Assessors in the courts; A study on the Sociology of Law* (1982).

²¹. *Ibid.*, p. 17.

²². *Ibid.*, p. 18.

and method of resolution of dispute was always in existence. Before the advent of justice, there undoubtedly was an indigenous system for resolution of disputes. The impact of English language, western literature, the British system of Justice and the universal rationality of Western Law have combined to induce an inbuilt prejudice for anything ancient. However, while trying to unearth and evaluate the indigenous system, it was found that the essentials of our ancient system were not very different from those of our present system.²³ While comparing the two systems, it was accepted that the subsidiary features of the present system includes clumsy and cumbersome procedure, while the earlier one was simple and less-formal. Undoubtedly, as the society advances from stage to stage, its needs alter from time to time and any system which governs the functioning of society or its component parts would also call for progressive modification.²⁴ One has, therefore, to keep in mind while devising the modern system, the changes that have occurred in the conditions and structure of the society for which the system is to be devised.

Indigenous system
in India

²³. LCI *Fourteenth Report*, Ch. 4, para 5, p. 25:

²⁴. *Ibid.*

CHAPTER III

NYAYA PANCHAYATS

History of Nyaya Panchayats.

3.1. Leaving aside the Hindu system, the Muslim system, the Royal Tribunals, etc., let us turn to Nyaya Panchayats which appear to be of historic antiquity. Prior to the Mughal period, village communities created their own Panchayats. There was no element of election. Respectable members of the village community formed the Panchayat and the decisions were generally accepted by the village community. Few disputes landed in courts. They were resolved more or less by a process of conciliation at the village level. Undoubtedly, during the Mughal period, some attempt was made for centralisation of justice system but the Britishers realised that there is a sort of an emotional attachment to Panchayat system and it might provide a reliable basis for decentralisation of administration including judicial administration. The Royal Commission of 1907 upon Decentralisation in India recommended the constitution and development of village Panchayats with certain administrative powers and jurisdiction in petty civil and criminal cases.²⁶ Panchayats were largely responsible for revenue administration of the village. 'Nyaya Panchayat' so named dealt with resolution of disputes. These Nyaya Panchayats are in vogue in one or the other form, sometimes active, more often dormant. Earliest statutory recognition came in the form of the village Courts Act, 1888 in Madras and the work done by such court with its very limited jurisdiction was appreciated by the High Courts of Madras by expressing the hope that more and more people will resort to the village courts. Number of other provinces adopted legislation similar to the Madras Act. The Civil Justice Committee of 1924-25 observed: "The Village Panchayat—villagers mediating between contending parties in their own village has, in some form or other, existed in this country from the earliest times and that without resort to any elaborate or complicated machinery. The judicial work of the panchayat is part of that village system which in most parts of India and Burma has been the basis of the indigenous administration from time immemorial."²⁶

Report of the Study Team on Nyaya Panchayats.

3.2. After the introduction of the Government of India Act, 1935, various provinces as part of their programme of democratic decentralisation enacted legislation for the revival or revitalisation of Panchayats including Nyaya Panchayats. Government of India appointed a Study Team under the Chairmanship of Mr. G.R. Rajagopaul, a Member of the Law Commission, on the functioning of the Panchayat courts in various States keeping in view the conclusions recorded by the Law Commission in Chapter 43 of its Fourteenth Report. The Study Team submitted its report. It *inter alia* recommended that villagers must be given a free hand in electing members of the Nyaya Panchayat and it totally ruled out the system of nomination. Rejecting the suggestion of voluntary submission of disputes for resolution of Nyaya Panchayats, it recommended that the jurisdiction of Nyaya Panchayats should be exclusive but in the first instance, it must be confined to simple, money and other suits and the upper pecuniary limit of civil jurisdiction may be Rs.250/- which may go up to Rs. 500/- with the consent of the parties. It was not in favour of conferring jurisdiction in matrimonial causes. It recommended conferment of jurisdiction for trying criminal cases in respect of petty matters where the punishment in the form of a fine would be an adequate corrective. It was not in favour of conferring revenue jurisdiction on the Nyaya Panchayats. It advocated introduction of conciliation as the method of resolution of disputes to be undertaken at the discretion of the Nyaya Panchayat. The Committee also drew up a formal bill to give effect to its recommendation called the Nyaya Panchayats Bill, 1962.

Recommendations of Panchayat Raj Committee and Legal Aid Committee set up by the Government of Gujarat.

3.3. The Government of Gujarat appointed a Committee styled as the High-Level Committee on Panchayati Raj. It submitted its report in 1972. Nyaya Panchayats have been dealt with in Chapter XIII of the Report. Before this report is taken into consideration, it would be necessary to refer to the Chapter on Nyaya Panchayats in the Report of the Legal Aid Committee, 1971 set up by the Government of Gujarat under the Chairmanship of the then Chief Justice of Gujarat High Court Justice P.N. Bhagwati. The Committee recommended a new pattern of Nyaya Panchayat

²⁶ LCI Fourteenth Report Vol. II, Ch. 43, para 3, p. 874.

²⁶ Extracted at page 874, Vol. II, LCI Fourteenth Report.

with a Panchayati Raj Judge to be assisted by two members from amongst a panel of persons to be drawn-up by the Collector of the District to act as Members of Nyaya Panchayat. It advocated as far as possible on the spot resolution of dispute by Panchayati Raj Judge and its two Members. It recommended a simple procedure more or less guided by justice, equity and good conscience. It in terms said that the procedure should be simple and uncomplicated and it should not be befogged by technicalities or complexities. The Panchayati Raj Committee more or less agreed with the recommendations of the Legal Aid Committee save and except that it was opposed to nomination of two Members of the Panchayati court by the Collector and it advocated election.

3.4. No stronger case can be made out in favour of peoples' participation in the administration of justice with the reinduction/revitalisation of the historically popular institution of Nyaya Panchayat.

Re-introduction of Nyaya Panchayats best example of people's participation in the administration of justice.

3.5. Let us at this stage recall the apprehensions voiced by the earlier law Commissions on conferring wide jurisdiction on Nyaya Panchayats. The Civil Justice Committee (1924-25) observed that 'communal differences and factions are in the way of any further extension of the jurisdiction of these tribunals'. There is some force in this objection, but it is in our opinion overstated. In villages where there are common interests to be protected, common services to be rendered and common funds to be administered, it is idle to ignore the common life of the village in which the necessities of neighbourhood have held their own or have prevailed against the divisions of caste.²⁷ The Law Commission in its Fourteenth Report after taking note of this observation, further observed that 'these factions and divisions, have increased by reason of the introduction of adult franchise all over the country and the appearance of political parties in the villages.' Rejecting this criticism and discounting the apprehensions, the Law Commission concluded that 'there is no reason why, with proper safeguards, these courts (Nyaya Panchayats) should not function with a fair amount of success and either conciliate or decide the petty disputes arising in the villages.'²⁸ Similarly, the Legal Aid Committee set up by the Government of Gujarat took notice of the factious atmosphere in villages further sub-divided by caste, community and politics, they entertained a genuine apprehension that 'it would be difficult to expect even-handed justice to be meted out by members of Nyaya Panchayats who would belong to one faction or group or the other'²⁹. These hesitations were dispelled by the overriding consideration that the Nyaya Panchayats with a slightly different pattern would be an effective vehicle for rendering justice on the spot or at the doorstep of the litigants. It would have a healthy impact on the village economy inasmuch as it will be a low cost justice system and man days in securing justice would not be lost. The psychological change that the rural poor would undergo by this altered system of administration of justice by their own peers in substitution of an alien system would be immeasurable. Trust them, provide safeguards for possible pitfalls, but do not reject them. Any innovation is always fraught with unseen danger but that by itself cannot be a road block to change.

Apprehensions about the Nyaya Panchayat system dispelled.

3.6. Even the Rajagopaul Committee after taking note of these apprehensions strongly advocated retention and revitalisation of Nyaya Panchayats.

Nyaya Panchayats formed by the Rajagopaul Committee.

²⁷. Report of the Civil Justice Committee, page 116, cited in LCI Fourteenth Report, Vol. II, Ch. 43, para 7, p. 876.

²⁸. LCI Fourteenth Report, Ch. 43, para 25, pages 911 and 912.

²⁹. Report of Legal Aid Committee, (Govt. of Gujarat, 1971) page 211. Para 13.14 (iii), P 211.

CHAPTER IV

PROPOSAL FOR ADOPTION OF A NEW FORUM OF NYAYA PANCHAYATS

Composition of existing Nyaya Panchayats.

4.1. It is at this stage advantageous to refer to the composition of Nyaya Panchayats at present in vogue. The Nyaya Panchayats at present are composed of directly elected members, and in some cases elected members of Gram Panchayat forming Nyaya Panchayats. The method is wholly elective. Undoubtedly, with adult universal suffrage and democratic decentralisation, political parties have penetrated into the smallest village. Even the Panchayat elections are more or less fought on political party lines. To that extent, the village landscape is politicised.

The purely elective system may bring in politicised individuals to man Nyaya Panchayats and with it would come inevitably political confrontations, prejudices and divisions. This may hamper administration of even handed justice. And even if these elected representatives act in an wholly judicious manner their political attachments would cause dissatisfaction amongst litigants to different political hue. This would cut at the root of one of the facets of justice, namely, justice must seem to be done. Therefore, having regard to this existing unquestionable situation, it is necessary to devise a scheme which permits people's participation simultaneously avoiding the pitfalls of elective system.

Constitutional justification for a new forum of Nyaya Panchayat.

4.2. A forum for resolution of disputes with people's participation in the administration of justice is justified in terms of Article 39A mandate. It may also seem to be justified in terms of providing simple procedure which may help in fighting the delay in the disposal of disputes simultaneously reducing the cost of making justice effective and substantial in character⁸⁰. A body variously described as Nyaya Panchayat, Lok Adalat, Jan Panchayat, People's Court is the goal intended herein. Its basic details are worked out in the succeeding paragraphs.

Composition of Nyaya Panchayat Judges.

4.3. The constitutional goal is to set up an egalitarian society governed by rule of law. It is oft repeated with some emotional attachment that we may better be ruled by laws than by men. The wholly elective method of choosing members for Nyaya Panchayats may not permit a legally trained mind to get into it. Basic knowledge of laws to render justice according to law is must. Therefore, any composition of Nyaya Panchayats must ensure for a legally trained Judge. It is, therefore, suggested that persons recruited to the civil judicial service of a state as Munsif, District Munsif or Civil Judge (JD) should preside over the Nyaya Panchayats. They would also be subject to the jurisdiction of the High Courts under Article 235 of the Constitution. They would, however, be eligible for promotion as sub-judges, District Judges, etc. as at present prevalent in the Subordinate Judicial Service of the States.

Continuation of existing Nyaya Panchayat laws.

4.4. In some states, the local Nyaya Panchayat laws provide for voluntary submission of disputes for resolution of Nyaya Panchayats constituted under the local law. The jurisdiction is minimal and has hardly been proved to be effective. However, if voluntary submission of jurisdiction to such Panchayat can be retained without in any way impinging upon the new forum herein suggested, no exception need be taken to it.

Panel of laymen to be kept for appointment of Panchayat Judges.

4.5. To provide effective people's participation in the administration of justice, the District Magistrate and the District and Sessions Judge for each District should draw up a panel of laymen from respectable residents in villages comprised in the district having educational attainments preferably upto a University degree or atleast a Higher Secondary School Leaving Examination. It is not intended to exclude marginal farmers, farm workers or other local residents from being empanelled and it would be in the discretion of the District Magistrate/District Judge to include such persons even if they do not possess necessary educational qualifications. Depending upon the size of each Taluka/Tehsil, the list of panelists may vary from ten to twenty. The list should be got approved by the High Court. Provision may be made in the law that the High Court should approve the panel within a specified period and shall be deemed to have been approved after the expiry of the period.

⁸⁰. See for a comprehensive Critical Review of Nyaya Panchayat System : U. Baxi; *The Crisis of the Indian Legal System*, (1982), Ch. 10, pp. 295-327.

4.6. Whenever a dispute is brought to the Panchayat Judges having his headquarters at Taluka/Tehsil level, he would first proceed to select two from the panel of laymen drawn up as afore-mentioned, keeping in view the fact that their inhabitant must be as far away as possible from the geographical location of the dispute. The Panchayat Judge and the two members of the panel will constitute a Nyaya Panchayat for the disputes. This constitution of Nyaya Panchayat will have legal expertise and people's participation and would avoid caste, communal or political contaminations.

4.7. Keeping in view the nature of the dispute, the Panchayat Court shall, after notice to parties, assemble in the village where the dispute has arisen or if it is not accessible, then in the nearest village, accessible by public road transport, hear parties, examine witnesses, if any, produced making a brief note of the evidence and dispose of the dispute there and then on the same day. In 90% of the disputes this procedure will provide adequate safeguards for judicial and judicious disposal of disputes.

4.8. The Panchayat Judge shall be provided with a transport vehicle preferably a jeep so that he can frequently move to the villages for on the spot disposal of the cases. Simultaneously, the vehicle must be made available to the other two Members of the Nyaya Panchayat for attending the court wherever it is to be held. This will save such voluntary Members from incurring cost and wasting time in reaching the place where the court is to be held.

4.9. If the two Members of the Panel constituting the court with the Panchayat Judge are employees working on wages, it is necessary to provide either that while working as the Members of the Panchayat, they are deemed to be on duty and should not suffer loss of wages or alternatively they must be paid daily allowance not less than the daily minimum wage earned by each of them.

4.10. Order XXI (Execution) of the present Code of Civil Procedure has been variously described by the High Courts as lawyer's heaven and the starting point of all the torture of the successful litigant. To avoid this tragic outcome, a decision of the Nyaya Panchayat must be immediately executed so that justice is effectively rendered. If the Nyaya Panchayat itself can there and then execute the decision, namely, a water passage or a cart road is to be prescribed by putting it on the paper and asking the revenue authority to map it out. In all other respects, it can take the assistance of the local officers of the revenue department and the development department as it suits its requirement for effective execution of its order.

4.11. The jurisdiction of such Nyaya Panchayats would extend to all disputes falling within the various heads set out in paragraph 2.7. To substantiate wide jurisdiction sought to be conferred on Nyaya Panchayats, it may be stated that in its Fourteenth Report, the Law Commission recommended that the civil jurisdiction of Panchayats should be Rs. 200/- or Rs. 250/- and with the approval of the High Court their jurisdiction may be increased to Rs. 500/-. If the value of the rupee in 1954 is compared to the present value, one can easily confer jurisdiction upto the value of Rs. 10,000/- Therefore, it is best not to prescribe any pecuniary limits as the jurisdiction and all the disputes comprehended in the afore-mentioned heads must come within the purview of the Nyaya Panchayats.

4.12. Similarly, in respect of the criminal jurisdiction, the Law Commission in its Fourteenth Report recommended that Nyaya Panchayat should have jurisdiction limited to inflicting a fine of Rs. 50/-, applying the same measure, it must have jurisdiction to try all petty offences which formerly a Magistrate of First Class was competent to try and must have power to inflict sentence of imprisonment also. This change is desirable, because the Nyaya Panchayat will now be composed of a legally trained Judge also.

4.13. While hearing a dispute, the Judges will evaluate and appreciate the evidence and the Panchayat Judge will render assistance with regard to simple for-mulations of law relevant to the dispute. Ordinarily, the Nyaya Panchayat will try to resolve the dispute by consensus. A decision by majority should not be ruled out. The decision must be drawn up in the local language supported by brief reasons.

4.14. When the dispute is before the Nyaya Panchayat, ordinarily, parties should be discouraged from engaging lawyers but if any party chooses to engage the lawyer so engaged may be heard but on no account an adjournment shall be granted for his accommodation nor the venue of the hearing be changed to accommodate him.

Revision against the orders of Panchayat Courts.

4.15. Even though the Law Commission of India in its Fourteenth Report deprecated any suggestion of an appeal or revision against the decision of the Nyaya Panchayat, it is necessary to provide for one revision petition to the District Court in the initial stages for correcting errors of law.

Exclusion of certain areas where courts with people's participation are Successful.

4.16. At present a unique experiment is being carried on by Anand Niketan Ashram, Rangpur, covering literally number of Talukas where voluntary Lok Adalat is functioning successfully. This was initiated by one Shri Harivallabh Parikh.²¹ Similar experiment with a slight variation is being carried on in Dholka Taluka. It was initiated by Ravi Shanker Maharaj and Muni Santbalji. If people in these and similar areas where such successful experiments with peoples participation in the administration of justice are carried on, so desire, it would be open to the authority to exclude these areas from the operation of the Nyaya Panchayat that may be set up as herein envisaged. Drawing inspiration from the success achieved by the Lok Adalats in Gujarat which at present is a voluntary effort sustained by the local Legal Aid Committee, some Lok Adalats were convened in various cities of Uttar Pradesh. A Lok Adalat presided over by retired Judges of the Delhi High Court was convened in Delhi for settling claims of victims of motor accidents. The attempt is to give it a concrete shape and form.

Impact on appeals to District Court.

4.17. It is hoped that a large number of disputes will be resolved by consensus and the feed stock for appeals in the District Court will be considerably reduced with the result that it will have an impact on the reduction of arrears in the District Courts as also in the High Courts.

Views invited.

4.18. The Law Commission invites views/comments on the subject with specific reference to the question whether there is need to constitute a body variously described a Nyaya Panchayat, Lok Adalat, Jan Panchayat, People's Court in rural and semi-urban areas on the lines indicated in the preceding paragraphs.

²¹. See U. Baxi, 'From Takkar to Karar : The Lok Adalat at Rangpur, A Preliminary Study' 10 *Journal of Constitutional and Parliamentary studies*, (1976), pp. 52-116, at p. 54.

APPENDIX II
WORKSHOPS

Participants

DELHI—18th and 19th January, 1986.

1. Sh. G.R. Rajgopaul.
2. Justice V.R. Krishna Iyer.
3. Justice O. Chinnappa Reddy.
4. Prof. Upandera Baxi.
5. Justice M.L. Jain.
6. Prof. N.R. Madhava Menon.
7. Prof. J.S. Gondhi.
J.N.U.
8. Sh. S.S. Vats.
9. Mrs. Khuller,
D.S. Planning Commission.
10. Sh. Punnuswamy.
11. Sh. Sivaramayya,
Law Faculty.
12. Sh. Bose
Law Faculty.
13. Mrs. Swaroop,
D.S. Planning Commission.
14. Sh. M.P. Singh.
15. Mrs. Kapila Hingorani,
Advocate.
16. Justice, Rajinder Sachar.
17. Sh. Pawan Chaudhary,
Advocate.
18. Mrs. Jose Verghese.
19. Mr. K.L. Sharma,
J. N. U.
20. Sh. D.V. Malhotra,
Sub-Judge.
21. Prof. K.S. Shukla,
Indian Institute of Public Administration.
22. Mrs. Chandramani Chopra,
Advocate-cum-Teacher.
23. Dr. Sundram,
Joint-Director,
Planning Commission.
24. Mrs. Pinki Anand,
Advocate.
25. Mrs. Urmila Kapoor,
Advocate, Supreme Court.
26. Mr. S.N. Kapoor,
Addl. Distt. & Sessions
Judge.
27. Sh. Gupta.
28. Sh. Ramanuja,
29. Sh. Krishan Kumar,
Advocate.

30. Prof. A.K. Kaul.
31. Mr. O.P. Shukla.
32. Sh. Krishan Kumar Mahajan,
Journalist.
33. Sh. P.D. Mathew.
34. Prof. Mohanty.
35. Sh. Pande.
36. Sh. Kateswar,
IIIrd Year LLB. Student.
37. Sh. Irovi.
38. Mrs. Usha Kumar,
Advocate.
39. Mrs. Messy,
Litigant.

SALEM—1st and 2nd February, 1986

1. Prof. R.V. Dhanpalan,
Central Law College.
2. Justice S.T. Ramlingam,
Judge, H.C. of Madras.
3. Sh. K.A. Palaniswamy,
Advocate.
4. Sh. R. Manikam,
Chief Metropolitan,
Magistrate,
Madras.
5. Sh. A.P. Chinnaswamy,
Advocate.
6. Sh. Vanniyar Adigalar,
Social Worker.
7. Sh. D. Gangappa,
I.A.S.
8. Sh. Henry Thiagaraj,
Madras.
9. Sh. Thangamani,
Distt. & Sessions
Judge.
10. Sh. E. Padmanabhan,
Advocate,
Madras.
11. Mrs. Asha Latha,
Advocate,
Madras.
12. Miss Radha Srinivasan,
Advocate,
Madras.
13. Sh. Kalyanam,
Member,
Gold Control,
Tribunal.
14. Sh. Thulasi Das,
Advocate.
15. Prof. Thirumalai,
Salem.
16. Sh. K. Govindrajan,
Advocate,
Madras.

17. Sh. C. Natarajan,
Advocate.
18. Sh. K.A. Penchapakeshan,
Madras.
19. Sh. Krishna Kumar,
Pondicherry.
20. Sh. V. Arulappan,
Advocate.
21. Sh. N. Gandhi,
President,
Madras H.C.
Bar Association,
Madras.
22. Prof. D. Vijayanarayana Reddy,
Deptt. of Law,
Nagarjun University.
23. Dr. K.N. Chandrasekaran Pillai,
Reader,
Deptt. of Law,
University of Cochin.
24. Prof. P.G. Viswanathan,
Central Law College.
Salem.

JAIPUR—1st and 2nd March, 1986

1. Sh. D.D. Achareya,
Minister for Irrigation,
Power and P.W.D.
2. Sh. Harideo Joshi,
Chief Minister of Rajasthan.
3. Mr. Justice G.M. Lodha.
4. Sh. Dev Narain Thanvi,
Advocate.
5. Sh. N.L. Jain,
Advocate General.
6. Sh. Jagdip Dhankar,
Advocate.
7. Sh. Mardul Mridhur.
8. Dr. Raghav Prakash.
9. Sh. Ram Krishan Kalla,
Advocate.
10. Sh. N.S.H. Gupta,
Lecturer,
Law College.
11. Mr. Justice S.N. Bhargava.
12. Mr. Ramesh Purohit.
13. Prof. S.L. Jain.
14. Sh. Satya Vrat.
15. Sh. Dhani.
16. Sh. Durga Lal Baoddar,
Advocate.
17. Sh. J.P. Vyas,
Assistant Professor, Law.
18. Sh. G.S. Singhur,
Advocate.
19. Sh. Poonam Chand Kandawat.
20. Mrs. Sunita Satyarth,
Advocate.

21. Sh. S.N. Sharma.
22. Prof. G.S. Sharma.
23. Mr. Justice Dave.
24. Sh. R.S. Verma.
25. Sh. Ugam Raj Bhandari,
Retired District and Sessions Judge.
26. Mrs. Kamla Jain.
27. Sh. R.P. Pahwa,
Assistant Professor of Law.
28. Sh. N.D. Sharma.
29. Dr. S.K. Khumbas.
30. Mr. Justice M.L. Shrimal,
Lok Ayukt.

VARANASI—15th and 16th March, 1986

1. Sh. Udai Shankar Pandey.
2. Sh. Krishan Deo Singh,
Advocate.
3. Sh. Suresh Prasad.
4. Sh. Prem Bhai.
5. Sh. Nagendra Prasad Singh.
6. Sh. Sagar Singh,
Advocate.
7. Mr. A.H. Khan,
Reader in Law.
8. Sh. Gauri Shankar.
9. Sh. K.N. Verma,
Advocate.
10. Dr. M.P. Singh,
Reader in Law,
B.H.U.
11. Sh. R.S. Jaiswal,
Lecturer,
Law School.
12. Dr. R.A. Malviya.
13. Sh. Yogendra Singh.
14. Sh. B.N. Mohilla.
15. Sh. Ganesh Dutt Dubey,
District Judge.
16. Sh. Sah.
17. Prof. R.K. Mishra.
18. Sh. S.N. Mishra.
19. Kumari Abha Trivedi.
20. Sh. A.B.L. Srivastav.
21. Sh. Brahm Prakash,
Advocate.
22. Prof. Krishan Bahadur.
23. Sh. B.S. Nirmal.
24. Sh. Dharamsheel Chaturvedi.
25. Sh. Som.
26. Sh. S.K. Singh.
27. Dr. U.C. Sankla.
28. Prof. Satyendra Tripathi.
29. Sh. Asha Ram Tiwari Pradhan.

30. Sh. Kishore.
31. Sh. Ram Shankar Mauriya.
32. Dr. Muniruddin Lohta.
33. Sh. Shiv Narain Srivastava.
34. Sh- Ram Subey Singh.
35. Sh. Ram Pradhan.
36. Sh. Sita Ram Singh.
37. Sh. Suresh Prasad.
38. Sh. Lallan Prasad Sanghat.

RANCHI—22nd and 23rd March, 1986

1. Sh. Justice S. Roy.
2. Sh. Kameshwar Prasad,
Advocate.
3. Sh. A. Sahay.
4. Dr. Schitanand,
V.C. Ranchi Uni.
5. Sh. R.N. Trivedi,
Head of Political Deptt.,
Ranchi University.
6. Sh. Prem Shankar Dayal,
Advocate.
7. Justice,
M.M. Prasad.
8. Sh. Sartaj Sharma.
9. Sh. Vipun Nath Samant.
10. Sh. N.K. Narayan.
11. Sh. Arjun Singh.
12. Sh. C.D. Choube,
Advocate.
13. Sh. Kameshwar Nath,
Advocate.
14. Sh. Bama Pato Rundra,
Advocate.
15. Sh. C.A. Guriya.
16. Sh. Rajaji and Kiran Guria.
17. Sh. Kale Munder,
Sarponch.
18. Sh. Masi Prakash Guriya,
Mukhiya.
19. Sh. Jakhariya Pahan.
20. Dr. N.K. Lall.
21. Sh. Jai Govind Verma.
22. Dr. K.N. Sahai,
23. Sh. Purshottam Das Boni.
24. Sh. Samanta,
Advocate.
25. Sh. Narendra Kishore Narain.
26. Sh. Arvind Prasad.
27. Sh. Rajani Kumar Singh,
Advocate.
28. Sh. Jagat Mani Mahto.
29. Sh. Ashwani Kumar.
30. Sh. Sudershan Pandey.

31. Sh. Satendra Singh,
Labour Court Judge.
32. Sh. K.N. Giri.
33. Sh. R.K. Prasad.

CALCUTTA—29th and 30th March, 1986.

1. Justice A.K. Sen Gupta,
Judge,
H. C. of Calcutta.
2. Dr. (Mrs.) Sarla Ghosh.
3. Sh. G.R. Bhattacharya,
D.J.,
Howrah.
4. Sh. Mangalmoy Sarkar.
5. Sh. B.K. Das,
Advocate.
6. Mrs. Mina Das,
Secretary,
Nistha.
7. Sh. Prabir Kumar Gupta,
Deputy Magistrate,
North 24 Pgs.
8. Sh. Moti Lal Bera,
School Teacher.
9. Sh. P. Dutta,
Asstt. Legal,
Remembrancer,
West Bengal.
10. Sh. Gobordhan Bhattacharya.
11. Sh. A.R. Singh,
Advocate,
Ranchi.
12. Sh. Sudhir Mandal,
Secretary,
B.U.P.
13. Sh. Biswanath Bajpae,
Advocate.
14. Justice M.M. Dutt,
Judge, S.C.
15. Mrs. Shanti Dutta,
Principal.
16. Sh. Raktim Mukhopadhyay,
Hon. Director,
B.U.P.
17. Dr. L.K. Khanra,
Calcutta.
18. Sh. Ram Kishore Prasad,
Advocate.
19. Prof. A.K. Mitra.
20. Justice R.N. Pyne,
Judge,
H.C. of Calcutta.
21. Prof. Sachidananda Maity,
Midnapore.
22. Dr. Sudhendu Mukherjee.
23. Prof. Gitanath Ganguly,
Law College,
Calcutta.

24. Sh. Rabindra Nath Rocy Chowdhury,
Howrah.
25. Sh. K.L. Rathi,
Purulia.
26. Sh. Barendra Bhushan Nandy.
27. Sh. Amiya Kumar Saha.
28. Prof. Mrs. Arati Ganguly.
29. Litigants
to. (Ladies)
- 36.
37. Justice B.P. Banerjee,
Judge,
H.C. of Calcutta.
38. Sh. Bikas Ch. Ghosh,
Former Chief Judge,
City Civil & Sessions Court,
Calcutta.
39. Sh. Ashwani Kumar Sinha,
Advocate,
Ranchi.
40. Sh. Satyendra Singh,
Judge,
Labour Court,
Ranchi.
41. Justice Mukul Gopal Mukherjee,
Judge,
Calcutta H. C.

INDORE—5th and 6th April, 1986

1. Sh. Joshi,
President,
High Court,
Bar Assoc.
2. Dr. Manohar Lal Dalal.
3. Justice R.K. Verma,
Judge,
H.C. Bench at Indore.
4. Sh. M.A. Khan,
Advocate.
5. Justice Mouley,
H.C. Bench at Indore.
6. Sh. K.L. Sehti,
Advocate.
7. Sh. P.G. Anikhandi,
Advocate.
8. Sh. D.M. Kulkarni,
Advocate.
9. Sh. Yashwant Kulkarni,
Advocate.
10. Sh. S.K. Gangele,
Advocate.
11. Dr. U.R.K. Rao.
12. Sh. S.C. Kansal.

13. Justice Gyani,
Judge,
H.C. Bench.
14. Prof. G.C. Kasaliwal.
15. Prof. C.S. Chhaze.
16. Sh. M.D. Arya,
Advocate.
17. Mrs. S. Joshi,
Advocate.
18. Sh. S. Joshi,
Govt.
Advocate.

APPENDIX III

A. State Governments

1. Government of Rajasthan (Judicial Department).
2. State Law Commission, Government of Meghalaya.
3. Government of Meghalaya (Law Department).
4. Government of Orissa (Law Department).
5. Government of Karnataka (Department of Law and Parliamentary Affairs).
6. Government of Madhya Pradesh (Law & Legislative Department).
7. Government of Mizoram (Law and Judicial Department).
8. Government of Punjab (Department of Legal and Legislative Affairs).
9. Government of Bihar (Law Department).
10. Government of Arunachal Pradesh (Law & Judicial Department).
11. Government of Maharashtra (Law and Judiciary Department).
12. Government of Kerala (Law Department).
13. Government of Andhra Pradesh (Law Department).
14. Government of Jammu and Kashmir (Law Department).

B. High Courts and Judges of the High Courts.

1. Justice P.B. Sawant,
High Court of Bombay.
2. Justice Kamleshwar Nath,
Allahabad High Court.
3. High Court of Orissa.
4. Justice Guman Mal Lodha,
Rajasthan High Court.
5. Justice V.S. Dave,
Rajasthan High Court.
6. High Court of Gujarat.
7. High Court of Madras.
8. Justice S.T. Ramalingam,
High Court of Madras.
9. Justice A. Raghuvir,
High Court of Andhra Pradesh.
10. Justice David Annonswamy,
High Court of Madras.
11. Justice Gulab Chandra Gupta,
High Court of Madhya Pradesh
Jabalpur (M.P.).
12. Justice P.C. Jain,
Rajasthan High Court,
Jaipur.
13. Justice K.N. Misra,
High Court of Allahabad.
14. Justice J.R. Chopra,
Rajasthan High Court,
Jodhpur.
15. Justice S.M. Jain,
Rajasthan High Court,
Jodhpur.

C. District Judges

1. Shri M.S. Vaidya,
District & Sessions Judge,
Akola (Maharashtra).
2. Shri H.B. Padate,
District & Sessions Judge,
Jalgaon (Maharashtra).
3. Shri A.B. Palkar,
District & Sessions Judge,
Solapur (Maharashtra).
4. Shri P.N.S. Chauhan,
Distt. & Sessions Judge,
Mandasaur (M.P.).
5. Shri R.M. Bapat,
District & Sessions Judge,
Ratnagiri (Maharashtra).
6. Shri K.K. Verma,
District & Sessions Judge,
Balaghat (M.P.).
7. District & Sessions Judge,
Indore (M.P.).
8. Shri V.A. Kamkanwadi,
District & Sessions Judge,
Satara (Maharashtra).
9. Shri P.V. Nirgudkar,
District & Sessions Judge,
Thane (Maharashtra).
10. Shri R.P. Awasthi,
Distt. & Sessions Judge,
Damoh (M.P.).
11. Shri P.V. Namjoshi,
Third Addl. Judge,
District Court of Damoh (M.P.).
12. Shri G.K. Kulshreshtha,
District & Sessions Judge,
Vidisha (M.P.).
13. Shri S.S. Dami,
District & Sessions Judge,
Ahmednagar (Maharashtra).
14. Shri Prakash Mehta,
District & Sessions Judge,
Bilaspur (M.P.).
15. Shri M.B. Majumdar,
District & Sessions Judge,
Sangli (Maharashtra).
16. Shri V.N. Nimbalkar,
District & Sessions Judge,
Parbhani (Maharashtra).
17. Shri P.K. Chavare,
2nd Additional District & Sessions Judge,
Parbhani.
18. Shri P.P. Bafna,
Additional District & Sessions Judge,
Parbhani.
19. Shri Ranganath Rath,
District & Sessions Judge,
Dhenkanal (Orissa).
20. Shri Sundar Lal Mehtra,
Judge,
Family Court.,
Jaipur.

D. Bar Councils/Bar Associations

1. Sangli Bar Association, Sangli.
2. Bar Council of Rajasthan, Jaipur.
3. Bar Council of Orissa, Bhubaneswar.
4. Bar Association of Khurai, Sagar (M.P.).
5. Bar Association, Kavathe-Mahamkal, District—Sangli (Maharashtra).
6. Bar Council of Tamil Nadu,
Madras.
7. Satara District Bar Association,
Satara.
8. Cuddalore Bar Association,
Cuddalore.
9. Bar Association of Tiruchengodu,
District-Salem,
Tamil Nadu.
10. Salem Bar Association,
Salem.
11. Bar Association of Tiruvallur.
12. Bar Association,
Sagar (M.P.).

E. Associations

1. Rajasthan Judicial Service Officers' Association,
Jaipur.
2. Progressive Law Association,
Bombay.
3. Institute of Public Affairs,
Madhuban.
4. Indian Procedural Law Orientation Association,
Sangli (Maharashtra).
5. A.P. Democratic Lawyers' Association, Hyderabad.
6. United Artists' Association, Ganjam (Orissa).
7. Common Cause, New Delhi.
8. Greater India League,
Bangalore.
9. Delhi Hindustani Mercantile Association.
Delhi.
10. Haryana Legal Aid to the Poor Committee,
Chandigarh.
11. All India Ambedkar Peoples Movement.
12. Social Action Interest Litigation,
Ranchi.
13. The All India Federation of Scheduled Caste/Tribes, Backwards and Minorities Employees Welfare Association,
New Delhi.
14. Sanjivayya Institute of Socio-Economic Studies,
New Delhi.

F. Advocates

1. Sh. M.A. Khan,
Indore (M.P.).
2. Sh. Ugam Raj Bhandari,
Jaipur.
3. Sh. R.R. Prasad,
Ranchi.
4. Sh. V.M. Tarkunde,
New Delhi.
5. Sh. G.L. Sanghi,
New Delhi.
6. Sh. S.K. Sundaram,
Madras.
7. Sh. G. Lingareddy,
Guntur (A.P.).
8. Sh. A.C. Pathak,
Nava Dahora,
Broad,
(Gujarat).
9. Sh. Syama Sumer Salon,
Gandhi Nagar,
Berhampur (Orissa).
10. Sh. Mahabalishwar N. Morje,
Bombay.
11. Shri K.N. Varma, Varanasi.

G. Individuals

1. Sh. Phiroze Amroliwalla,
Bombay.
2. Sh. K.P.S. Mahalwar and
Shri P.C. Juneja,
Maharashi Dayanand University,
Rohtak (Haryana).
3. Sh. Ras Mohan Tiwari,
Pali,
Ranchi.
4. Dr. M. Narayanaswamy,
Madras.
5. Sh. H.D. Shonrie,
New Delhi.
6. Dr. Paras Diwan,
Chandigarh.
7. Sh. Dharam Pal Mehta,
Faridabad.
8. Sh. Shamshad Ahmed,
Lucknow.