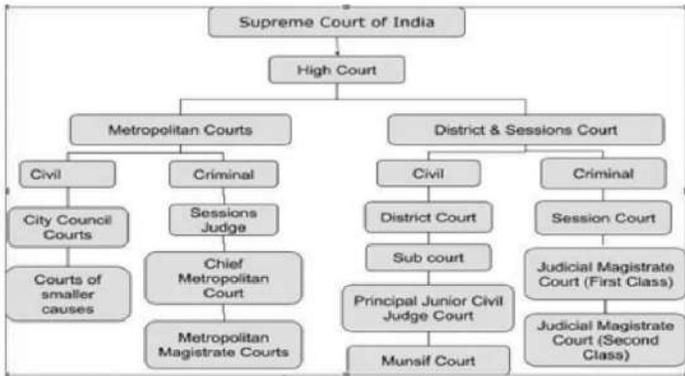


Introduction

The states establish the organisational structure, legal authority, and nomenclature of the subordinate judiciary. As a result, they vary slightly amongst states. Under the High Court, there are, generally speaking, three tiers of civil and criminal courts.



In each district of India there are various types of subordinate or lower courts. They are civil courts, criminal courts and revenue courts. These Courts hear civil cases, criminal cases and revenue cases, respectively.

- Civil cases pertain to disputes between two or more persons regarding property, breach of agreement or contract, divorce or landlord – tenant disputes. Civil Courts settle these disputes. They do not award any punishment as violation of law is not involved in civil cases.
- Criminal cases relate to violation of laws. These cases involve theft, dacoity, rape, pickpocketing, physical assault, murder, etc. These cases are filed in the lower court by the police, on behalf of the state, against the accused. In such cases the accused, if found guilty, is awarded punishment like fine, imprisonment or even death sentence.
- Revenue cases relate to land revenue on agriculture land in the district.

Appointment of District Judges [Article 233]

The Governor of the State, in consultation with the High Court, appoints, posts, and promotes district judges in

the State.

The following qualifications should be present in anyone seeking to be appointed as a district judge:

- He/she should not already be in the service of the Central or the State Government.
- He/she should have been an advocate or a pleader for seven years.
- He/she should be recommended by the High Court for the appointment.

Appointment of persons other than District Judges [Article 234]

Appointment of persons (other than district judges) to the judicial service of a state are made by the Governor of the state after consultation with the State Public Service Commission and the high court

Control over Subordinate Courts [Article 235]

The control over district courts and other subordinate courts including the posting, promotion and leave of persons belonging to the judicial service of a state and holding any post inferior to the post of district judge is vested in the high court.

Interpretation of the terms [Article 236]

The expression ‘district judge’ includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge. The expression ‘judicial service’ means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

Application of the above Provisions to Certain Magistrates [Article 237]

The Governor may direct that the above-mentioned provisions relating to persons in the state judicial service would apply to any class or classes of magistrates in the state

Subordinate Courts- Structure and Jurisdiction

The States define the subordinate judiciary's organizational structure, jurisdiction, and terminology. As a result, they vary slightly from State to State. Generally, underneath the High Court, there are three tiers of civil and criminal courts.

District Judge

The district judge is the district's highest judicial authority with original and appellate authority in both civil and criminal issues.

To put it another way, the district judge also serves as the sessions judge. He/she is known as the district judge when dealing with civil issues and the sessions judge when dealing with criminal cases.

Both judicial and administrative authorities are exercised by the district judge and also have supervisory authority over all of the district's subordinate courts.

The High Court hears appeals against his/her directives and judgments. Any penalty, including life imprisonment and capital punishment, can be imposed by the session's judge (death sentence). However, whether or not there is an appeal, any capital punishment he/she imposes must be confirmed by the High Court.

Lower Courts

On the civil side, the Subordinate Judge's Court is located below the District and Sessions Court, while on the criminal side, the Chief Judicial Magistrate's Court is located beneath the District and Sessions Court.

In civil cases, the subordinate judge has unrestricted pecuniary jurisdiction while the chief judicial magistrate rules on criminal matters that carry a maximum sentence of seven years in jail.

The Court of Munsiff, on the civil side, and the Court of Judicial Magistrate, on the criminal side, are the lowest levels.

The munsiff has limited jurisdiction and only decides minor civil issues of the low monetary stake while a judicial magistrate is a person who hears criminal proceedings which are punishable by a sentence of up to three years in jail.

On the civil side, there are city civil courts (chief judges) in various metropolitan cities, and on the criminal side, there are courts of metropolitan magistrates.

Small Causes Courts have been established in several States and presidential towns. These courts make quick decisions in civil matters with low stakes. Their decisions are final, although the High Court can

overturn them.

Panchayat Courts hear petty civil and criminal cases in several states. Nyaya Panchayat, Gram Kutchery, Adalati Panchayat, Panchayat Adalat, and so on are some of the names given to them.

National Legal Services Authority

Evolution of free legal aid in India

Article 39A of the Indian Constitution assures underprivileged and weaker sections of society free legal help as well as fair justice for all.

The State must also ensure equality before the law and a judicial system that promotes justice on an equal footing for all citizens, according to Articles 14 and 22(1) of the Constitution.

Since 1952, the Indian Government has addressed the issue of legal aid for the underprivileged at a number of conferences of law ministers and law commissions.

The Government issued rules for legal aid schemes in 1960 and plans were proposed by Legal Aid Boards, Societies, and Law Departments in several states. Under the Chairmanship of Justice P.N. Bhagwati, then a Judge of the Supreme Court of India, a national committee was formed in 1980 to oversee and regulate legal assistance programs across the country.

Legal Services Authorities Act was enacted by Parliament in 1987 and came into force on November 9, 1995, to create a nationwide uniform network for delivering free and competent legal services to the weaker parts of society on an equal footing.

National Legal Services Authority (NALSA)

The National Legal Services Authority (NALSA) was founded in 1995 under the Legal Services Authorities Act of 1987 to monitor and review the effectiveness of legal aid programs and to develop rules and principles for providing legal services under the Act.

It also distributes funding and grants to State Legal Services Authorities and non-profit organizations to help them execute legal aid systems and initiatives.

Who is eligible?

The conditions for providing legal assistance to qualified people are outlined in Section 12 of the Legal Services Authorities Act of 1987.

Every person who has to file or defend a lawsuit

under this Act shall be entitled to legal assistance if such person is:

- ❑ a member of a Scheduled Caste or Scheduled Tribe.
- ❑ a human trafficking victim or beggar, as defined in Article 23 of the Constitution.
- ❑ a child or a woman.
- ❑ a person who is mentally ill or otherwise impaired.
- ❑ a person who is a victim of unjustified poverty, such as a mass disaster, ethnic violence, caste atrocities, flood, drought, earthquake, or industrial calamity.
- ❑ a factory worker, etc
- ❑ Disabled persons
- ❑ Persons in custody
- ❑ Persons whose annual income does not exceed ₹1 lakh (in the Supreme Court Legal Services Committee the limit ₹1,25,000/-)

Objective

To develop an inclusive legal system that provides marginalized and disadvantaged people with fair and meaningful justice.

Structural Organization under Legal Services Authority Act

As a result of the Legal Services Act, a National Legal Services Authority (NALSA) was established as the apex body for regulating the legal aid provisions. State Legal Services Authority (SLSA) handles the implementation of NALSA's powers at the state level, which delegates further to a number of organizations.

NALSA is considered to be an alliance between the State, Social Action Groups, individuals, and non-profit organizations that have their presence from the grassroots level to the state level.

After the constitution of NALSA, the following schemes and measures have been envisaged and implemented by the Central Authority:

- ❑ Establishing permanent and continuous Lok Adalat's in all districts of the country for the pre-litigation resolution of pending concerns and conflicts;
- ❑ Separate permanent and continuous Lok Adalat's for

Government Departments, Statutory Authorities, and Public Sector Undertakings for the pre-litigation resolution of pending issues and disputes;

- ❑ Accreditation of NGOs for Legal Literacy and Legal Awareness campaign;
- ❑ Appointment of "Legal Aid Counsel" in all of the country's courts of Magistrates;
- ❑ Disposal of cases through Lok Adalat's on old pattern;
- ❑ Publicity to Legal Aid Schemes and programs to make people aware about legal aid facilities;
- ❑ Emphasis on competent and quality legal services to the aided persons;
- ❑ Legal aid facilities in jails;
- ❑ Establishing Counselling and Conciliation Centres in all of the country's districts;
- ❑ Educating Judicial Officers on Legal Services Schemes and Programs;
- ❑ Publication of "Nyaya Deep", the official newsletter of NALSA;
- ❑ Increase the income ceiling for legal help before the Supreme Court of India to Rs.1,25,000/- per annum and to Rs.1,00,000/- per annum for legal aid up to the High Courts; and
- ❑ Steps to take to draught guidelines for the return of court fees and the execution of Lok Adalat Awards.

State Legal Service Authority

- ❑ A State Legal Services Authority is established in each state to carry out the Central Authority's policies and orders, provide legal services to the people, and conduct Lok Adalat's.
- ❑ The State Legal Services Authority is led by the Chief Justice of the State High Court, who also serves as its Patron-in-Chief, and its Executive Chairman is a serving or retired High Court Judge.
- ❑ The purpose of each District Legal Services Authority is to carry out the District's Legal Aid Programs and Schemes. The District Judge serves as its ex-officio Chairman.
- ❑ Taluk Legal Services Committees are also formed for each Taluk or Mandal, or for a group of Taluks or Mandals, to coordinate legal services activities in the Taluk and organize Lok Adalat's. Every Taluk

Legal Services Committee is chaired by an ex-officio Chairman who is a senior Civil Judge who works within the Committee's jurisdiction.

Lok Adalat

NALSA along with other Legal Services Institutions conducts Lok Adalats. Lok Adalat is one of the alternative dispute redressal mechanisms, it is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987.

Nature and Scope:

Generally speaking, Lok Adalat is not a court in its accepted connotation. The difference between Lok Adalat and law court is that the law court sets at its premises where the litigants come with their lawyers and witnesses goes to the people to delivers justice at their door step. Lok Adalat is a forum provided by the people themselves or by interested parties including social activities or social activist legal aiders, and public-spirited people belonging to every walk of life. It is just a forum provided by the people themselves for enabling the common people to ventilate their grievances against the state agencies or against other citizens and to seek a just settlement if possible.

The basic philosophy behind the Lok Adalat is to resolve the people dispute by discussion, counselling, persuasion and conciliation so that it gives speedy and cheap justice, mutual and free consent of the parties. In short it is a party's justice in which people and judges participate and resolve their disputes by discussion, persuasion and mutual consent.

Lok Adalats is deemed to be a decree of a civil court and is final and binding on all parties.

Nature of cases to be referred to Lok Adalat

The types of cases dealt with generally are:

- Mutation of land cases.
- Compoundable criminal offences.
- Family disputes.
- Encroachment on forest lands.
- Land acquisition disputes.
- Motor accident claim, and
- Cases which are not sub-judice.

Provided that any matter relating to an offence not compoundable under the law shall not be settled in Lok Adalat.

Which Lok Adalat to be approached?

As per the Act, a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of -

- Any case pending before; or
- Any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organised.

Provided that the Lok Adalat shall have no jurisdiction in respect of matters relating to divorce or matters relating to an offence not compoundable under any law.

How to get the case referred to the Lok Adalat for Settlement?

- Case pending before the court.
- Any dispute at pre-litigative stage.

The State Legal Services Authority or District Legal Services Authority as the case may be on receipt of an application from any one of the parties at a pre-litigation stage may refer such matter to the Lok Adalat for amicable settlement of the dispute for which notice would then be issued to the other party.

Levels and Composition of Lok Adalats:

At the State Authority Level

- The Member Secretary of the State Legal Services Authority organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judge of the High Court or a sitting or retired judicial officer and any one or both of- a member from the legal profession; a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes.

At High Court Level

- The Secretary of the High Court Legal Services Committee would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judge of the High Court and any one or both of- a member from the legal profession; a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal

services schemes or programmes.

At District Level

- The Secretary of the District Legal Services Authority organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or both of either a member from the legal profession; and/or a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes or a person engaged in para-legal activities of the area, preferably a woman.

At Taluk Level

- The Secretary of the Taluk Legal Services Committee organizing the Lok Adalat would constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or both of either a member from the legal profession; and/or a social worker engaged in the upliftment of the weaker sections and interested in the implementation of legal services schemes or programmes or a person engaged in para-legal activities of the area, preferably a woman.

National Lok Adalat

National Level Lok Adalats are held for at regular intervals where on a single day Lok Adalats are held throughout the country, in all the courts right from the Supreme Court till the Taluk Levels wherein cases are disposed of in huge numbers. From February 2015, National Lok Adalats are being held on a specific subject matter every month.

Permanent Lok Adalat

The other type of Lok Adalat is the Permanent Lok Adalat, organized under The Legal Services Authorities Act, 1987.

- Permanent Lok Adalats have been set up as permanent bodies with a Chair-man and two members for providing compulsory pre-litigative mechanism for conciliation and settlement of cases relating to Public Utility Services like transport, postal, telegraph etc.
- Here, even if the parties fail to reach to a settlement, the Permanent Lok Adalat gets jurisdiction to decide the dispute, provided, the dispute does not relate to any offence.

- Further, the award of the Permanent Lok Adalat is final and binding on all the parties.
- The jurisdiction of the Permanent Lok Adalats is up to Rs. Ten Lakhs. Here if the parties fail to reach to a settlement, the Permanent Lok Adalat has the jurisdiction to decide the case.

Mobile Lok Adalats

Mobile Lok Adalats are also organized in various parts of the country which travel from one location to another to resolve disputes in order to facilitate the resolution of disputes through this mechanism.

Resources and achievement of Lok Adalat:

Lok Adalat can only expect gratitude of the people in distress in return. They must devote time for the cause of social justice and dedicate their service for its success. Lok Adalats are generally organized in the premises of courts. Lok Adalat can work as substitutes for setting cases which are pending in superior courts. Encouraged by the response that Lok Adalat have been receiving at the district level, the state legal aid boards have started organizing Lok Adalats for cases pending in the High Courts.

The Lok Adalat has also been organized even for the cases pending in the Supreme Court.

Organization of Lok Adalat

The State authority or district authority or the High Court legal services committee or as the case may be; Tehsil legal services committee may organize Lok Adalat at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit. Every Lok-Adalat organized for an area shall consist of such number of;

- Serving or retired on judicial officer, and
- Other person of the area as may be specified by the state authority or the district authority or the High Court legal services committee or as the case may be, the Tehsil legal services committee organizing such Lok Adalats.

The experience and qualifications of persons for Lok Adalats shall be such as may be prescribed by the government in consultation with the chief justice of the High Court.

Procedure of Lok-Adalats

- The Lok Adalats are generally organized by state

legal aid and advice boards or the district legal aid committees etc. Lok Adalats shall have jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute in respect of;

- Any case pending before the court; or
- Any matter which is falling within the jurisdiction of and is not brought before any court for which the Lok Adalat is organized.
- The Lok Adalat shall not have jurisdiction in respect of any matter or case relating to an offence not compoundable under any law.
- The date and place of holding a Lok Adalat are fixed about a month in advance by the Legal Aid Board. The date so fixed is generally a Saturday or Sunday or some other holiday.
- Information about holding a Lok Adalat is given wide publicity through press, posters, radio, TV, etc.
- Before a Lok-Adalat is held, its organizers request the presiding officers of the various local courts to examine cases pending in their courts where in their opinion, conciliation is possible. Once the cases are identified, parties to the dispute are motivated by the judges of the Lok Adalats to settle their cases through Lok Adalat. Generally, senior judicial officers are invited to inaugurate a Lok Adalat.
- The team of Lok Adalat generally consist of retired judges, senior local officers, members of the Bar, spirited public-men, active women social worker, elders of the locality and voluntary social organizations. The members of the Lok Adalat are called conciliators. The number of conciliators is usually three.
- If conciliation result in a settlement of a dispute, a compromise deed is drawn up and after obtaining the signatures of the parties to the disputes and their advocates, it is presented to the presiding officer of the competent court who is normally present at the place where the Lok Adalat is organized.
- The judge (Presiding officer) after examining the fairness and legality of compromise and satisfying himself that the compromise has been arrived at by the free will and mutual consent of the parties, passes a decree.

Award of Lok-Adalat

- Every award of the Lok Adalat shall be deemed to be a decree of civil court. Award made by a Lok Adalat shall be final and binding on all the parties to the dispute and no appeal shall lie to any court against the award.
- If the parties are not satisfied with the award of the Lok Adalat though there is no provision for an appeal against such an award, but parties are free to initiate litigation by approaching the court of appropriate jurisdiction by filing a case by following the required procedure.
- There is no court fee payable when a matter is filed in a Lok Adalat. If a matter pending in the court of law is referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court on the complaints/petition is also refunded back to the parties.
- The Lok Adalat shall not decide the matter so referred at its own instance, instead the same would be decided on the basis of the compromise or settlement between the parties. The members shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute.

Powers of Lok Adalat

The Lok-Adalat shall have the same powers as are vested in a civil court under the code of civil procedure 1908 while trying a suit in respect of the following matters namely;

- The summoning and enforcing the attendance of any witness and examining him on oath.
- The discovery and production of any document.
- The reception of evidence on affidavits.
- The requisitioning of any public record or document or copy of such record or document from any court of office and
- Such other matters as may be prescribed.

Every Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

All proceedings before the Lok Adalat shall be deemed to be judicial proceedings and every Lok-Adalat shall deemed to be civil Court.

Gram Nyayalaya

Gram Nyayalayas are village courts for speedy and easy access to the justice system in the rural areas of India.

The establishment of Gram Nyayalayas in India can be traced to the Gram Nyayalayas Act, 2008 passed by the Parliament of India.

Need for Gram Nyayalayas

- ❑ The Constitution of India under Article 39-A mandates for free legal aid to the poor and weaker sections of society.
- ❑ The Law Commission of India in its 114th report recommended the establishment of Gram Nyayalayas for providing speedy, substantial and inexpensive justice to the common man.
- ❑ Subsequently, the Parliament of India passed the Gram Nyayalayas Act, 2008 providing for its establishment.

Salient features of the Gram Nyayalayas Act

The Gram Nyayalayas Act defines its establishment, jurisdiction, and procedure in civil and criminal cases.

Establishment of Gram Nyayalaya

- ❑ The State Government, after consultation with the High Court, may establish one or more Gram Nyayalayas
 - for every Panchayat at intermediate level or
 - a group of contiguous Panchayats at the intermediate level in a district or
 - where there is no Panchayat at intermediate level in any State, for a group of contiguous Gram Panchayats
- ❑ The Gram Nyayalayas established shall be in addition to the courts established under any other law for the time being in force.
- ❑ The headquarters of every Gram Nyayalaya shall be located at the headquarters of the intermediate Panchayat in which the Gram Nyayalaya is established or such other place as may be notified by the State Government.

Appointments

- ❑ The State Government shall, in consultation with the High Court, appoint a Nyayadhikari for every Gram Nyayalaya
- ❑ A person qualified to be appointed as a Nyayadhikari

must be eligible to be appointed as a Judicial Magistrate of the first class.

- ❑ While appointing a Nyayadhikari, representation shall be given to the members of the Scheduled Castes, the Scheduled Tribes, women and such other classes or communities

Jurisdiction

- ❑ Gram Nyayalayas have jurisdiction over an area specified by a notification by the State Government in consultation with the respective High Court.
- ❑ Nyayadhikari can hold mobile courts and conduct proceedings in villages.
- ❑ Gram Nyayalayas has both civil and criminal jurisdiction over the offences.
- ❑ They can try criminal offences specified in the First Schedule and civil suits specified in Second Schedule to the Act.
- ❑ The Central as well as the State Governments have been given the power to amend the First Schedule and the Second Schedule of the Act.
- ❑ The pecuniary jurisdiction of the Nyayalayas is fixed by the respective High Courts.
- ❑ High Courts can transfer eligible cases from the district court to the Gram Nyayalayas.
- ❑ The Court shall try to settle disputes via conciliation between the parties and the court can make use of the conciliators to be appointed for this purpose.

Working

- ❑ The Gram Nyayalayas are is not bound by the Indian Evidence Act and follow the principle of natural justice.
 - ❑ The Gram Nyayalaya shall exercise the powers of a Civil Court with certain modifications and shall follow the special procedure as provided in the Act.
 - ❑ The Gram Nyayalaya shall endeavour to settle the disputes by bringing about conciliation between the parties as far as possible and it shall make use of the conciliators appointed for this purpose.
 - ❑ The Gram Nyayalaya shall follow the summary procedure in case of criminal cases. A summary procedure is a legal procedure for enforcing the right that takes effect faster and more efficiently than ordinary methods.
-

Nature of Judgement

- ❑ The judgements/orders passed by the Gram Nyayalaya are deemed to be a decree
- ❑ Appeals
 - Appeal in Civil cases– Appeals in civil cases shall lie to the District Court which shall hear and dispose it within six months from the date of filing of such appeal.
 - Appeal in Criminal Cases– Appeals in criminal cases shall lie to the court of session which shall hear and dispose it within six months from the date of such appeal.

Importance of Gram Nyayalayas

- ❑ Access to justice for the poor and marginalized remains a perennial problem in India.
- ❑ Various measures such as simplifying procedural laws, establishing alternate dispute redressal mechanisms, setting up fast track courts and providing free legal aid to the poor are undertaken in this regard.
- ❑ Despite these measures, access to justice and faster, inexpensive settlement of disputes at the grass-roots level are yet to materialize.
- ❑ Gram Nyayalayas can greatly help in
 - devolving justice delivery to the fourth tier
 - ensuring equal access to justice
 - reducing the burden of district courts
 - delivering speedier justice
 - reducing the costs associated with litigation for the common man
 - reducing dependency on extra-constitutional forums of justice

Why Gram Nyayalayas is not operational?

- ❑ Lack of infrastructure like buildings, office spaces and related equipment.
- ❑ Lack of man-power resources, notaries, stamp vendors etc. at sub-district level.
- ❑ Inadequate Central assistance.
- ❑ Lack of awareness among lawyers, police officials.
- ❑ Non-cooperation of enforcement agencies.
- ❑ The reluctance of state functionaries to invoke the jurisdiction of Gram Nyayalayas.

- ❑ Setting up of legal services institutions at Taluk level reducing the dependency on Gram Nyayalayas.

Criticisms on Gram Nyayalayas

- ❑ The number of disputes settled by Gram Nyayalayas are negligible and most are referred to District forums by appeal. Hence, they are not effective in reducing the burden of District Courts.
- ❑ Absence of a regular cadre of Gram Nyayadhikari.
- ❑ Ambiguities regarding jurisdiction due to the parallel existence of alternate dispute mechanisms, tribunals, Adalats etc.
- ❑ Some Gram Nyayalaya is located at cities and towns which doesn't provide any utility to villagers.
- ❑ Inadequate awareness amongst various stakeholders.

How to improve the functioning of Gram Nyayalayas?

- ❑ A separate cadre of Nyayadhikaris can be created so that Gram Nyayalayas has its dedicated cadre of Nyayadhikaris.
- ❑ Only the creation of separate cadre will not suffice. Appropriate training should be provided to Nyayadhikaris about legal procedures, local languages, etc.
- ❑ Separate buildings, its own staff, and other infrastructure must be made available and for those appropriate budgetary measures must be taken.
- ❑ Avoiding situations of parallel jurisdiction and duplicity of jurisdiction may go a long way in the success of Gram Nyayalayas.
- ❑ Scientific assessment of performance must be done periodically by respective High courts, and policy institutions like NITI Aayog can put things in perspective.
- ❑ Awareness generation campaigns through print and digital media and through panchayat raj institutions must be held to make people aware about the importance and ease of Gram Nyayalaya procedures so that they grow willingness to use the platform.

Family Court

Family courts are specialized courts that were established with the goal of preserving the welfare of the family through the use of a multi-disciplinary approach

to resolving family problems within the framework of the law.

These courts aim to protect individuals' legal rights on the one hand, and to serve as a guide, helper, and counsellor on the other, to help families deal with problems and restore family harmony.

To provide speedy settlement with fewer expenses and formalities, in disputes relating to marriage and family and to make an agreement between the parties for their conciliation, the Family Courts Act, 1984 was enacted by the parliament. Through this act, the Family Courts were set up in the states through which reasonable efforts for an agreement are made before beginning a trial in other Courts.

Important provisions of the Family Courts Act, 1984 ***Establishment of family courts in India***

According to this act, the State government, after consultation with the High Court shall establish the Family Court in every area of the state where the population is exceeding 1 million or in the area where the State government deem necessary.

The State government, after consultation with the High Court, shall specify the limits of the area till where the jurisdiction of the Family Court extends. It may also reduce, increase, or alter such limits of the jurisdiction of the Family Court.

Appointment of the Judges

The state government has the power to appoint one or more persons as the judges of the Family Court after consulting with the High Court.

The state government, after consulting with the High Court, may also appoint any of the judges as the Principal Judge and any other judge as to the Additional Principal Judge.

The main function of the Principal Judge is to distribute the business of the court among the various judges and the Additional Principal Judge is appointed to exercise the powers of the Principal Judge in his absence or when he is not able to do so due to illness or any other cause.

Qualification

Qualifications which are required for appointing as judge of the Family Court:

- ❑ He must have worked for a term not less than seven years in a Judicial Office in India or in the office of a Member of a Tribunal or any post under the Centre or a State which requires special knowledge of law; or
- ❑ He must have worked as an advocate of a High Court or two or more courts of succession for a term not less than seven years; or
- ❑ He must possess such qualifications as prescribed by the Central government after consulting with the Chief Justice of India; or
- ❑ He must have not attained the age of sixty-two years.

In this process of selection of judges, it must be ensured that the person selected must know how to settle a dispute by way of conciliation and counselling, to protect the marriage and to promote the welfare of the children by their reason and experience. While selecting the judges, it must also be ensured that the preference shall be given to the women.

The salary or honorarium, other allowances payable and other terms and conditions of the judges of the Family Court will be decided by the State Government after consulting with the High Court.

Jurisdiction

Act confers those power and jurisdiction on the family courts which are exercised by the District Court or Subordinate Civil Courts in their suits and proceedings.

- ❑ proceeding for the decree of nullity of marriage, or restitution of conjugal rights, or for the dissolution of the marriage between the parties;
- ❑ proceeding for determining the validity of a marriage or matrimonial status of a person;
- ❑ matter related to the properties between the parties to a marriage;
- ❑ injunction or order arising out of a marriage;
- ❑ declaring the legitimacy of a person;
- ❑ proceeding for maintenance;
- ❑ proceeding for the guardianship of the person, or custody of any minor.

Significance of Family Court

- ❑ It attempts to effect reconciliation or a settlement between the parties to a family dispute.
- ❑ During the conciliation stage, it provides for the

association of social welfare agencies, counsellors, and so on, as well as the service of medical and welfare experts.

- ❑ The parties to a dispute before a Family Court are not entitled to be represented by a legal practitioner as a matter of right. However, in the interest of justice, the Court may seek the assistance of a legal expert as an *amicus curiae*.
- ❑ The rules of evidence and procedure are simplified so that a dispute is dealt with effectively.
- ❑ Only one right of appeal is provided which is to the High Court.
- ❑ In order to reduce and simplify legal formalities, they take a multidisciplinary approach to ensure a fair trial and the expeditious resolution of cases at a low cost.
- ❑ In order to simplify proceedings, family courts have the authority to establish their own procedures for settlement through rules developed in consultation with the High Courts.
- ❑ Thus, expertise and expeditious disposition are two major factors for establishing such a court.
- ❑ It also aimed to provide an inexpensive remedy and to have the flexibility and an informal atmosphere in the conduct of proceedings.

Criticism of Family Court

- ❑ The term "family," has not been defined in the Act, and a result of which matters arising from economic consequences that affect the family in various ways are not covered by the family court.
- ❑ The family court only hears cases involving marriage, maintenance, and divorce.
- ❑ When the counsellors and other authorities kept changing, the situation deteriorated.
- ❑ If a suit lasted a long time and the counsellors was changed in the middle of it, it became difficult for the parties, particularly women, to convey their problems again.
- ❑ Despite the fact that it is mandatory for state governments to establish family courts in cities with populations of over a million people in consultation with the High Court, only a few states have done so.
- ❑ Since the family court follows the provisions of the

Code of Civil Procedure in suits or proceedings, it makes it difficult for the average person to understand the complex law.

- ❑ The act did not create any simplified rules that a layperson could understand.
- ❑ The act also prohibits the presence of lawyers in a family court suit or proceeding, making it difficult for the average person to understand the court's procedure and formalities.
- ❑ In such cases, the parties to a suit must rely on the clerks and peons of the court.
- ❑ The act was enacted to establish family courts across the country with a conciliatory approach to ensure quick relief to the parties, but it failed to ensure gender justice and equality due to judges' orthodox thinking and counsellor's patriarchal attitudes.

Nyaya Panchayat

Nyaya Panchayats are considered as a unit of the Panchayati Raj System of India. They function at the village or district level to deliver justice and thus are considered as the most basic level of the Indian Judiciary.

Reasons for setting up Nyaya Panchayats

The rationale behind setting up the Nyaya Panchayat is:

- ❑ Democratic decentralisation.
- ❑ Easy access to justice.
- ❑ Speedy disposal of cases.
- ❑ Inexpensive justice system.
- ❑ Revival of traditional village community life.
- ❑ Combination of judicial system and local self-government.
- ❑ Reduction in pressure on Civil Courts.

However, according to the latest reports, this institution is functioning only in handful of states.

Composition of Nyaya Panchayat

Every Panchayat that comes under the jurisdiction of Nyaya Panchayat elects a member for such Nyaya Panchayat. The elected member must be –

- ❑ 30 years old or above,
 - ❑ He must be a registered voter in the concerned Panchayat,
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- ❑ He must be literate to read and write in the concerned State's language, and
- ❑ He must not be debarred from being elected to the Panchayat under any law in force.

Whoever is elected as the Nyaya Panch shall not hold the office of Sarpanch, or a Parishad, or of a member of Samithi, or a State Legislature or Union Parliament simultaneously.

Jurisdiction of Nyaya Panchayats

- ❑ It has judicial functions both in civil as well as in criminal fields.
- ❑ It can deal with several minor offences) like simple hurt, wrongful restraint, theft etc, and punish an accused to pay fine.
- ❑ In civil matters nyaya panchayat have jurisdiction in cases like suits for money and goods etc. The pecuniary limit of such cases is very low.

Procedure in Nyaya Panchayats

- ❑ The procedure laid down for trial of cases has been so designed as to avoid delays and technical difficulties. Therefore, procedure followed in nyaya panchayats is very simple and informal.
- ❑ The procedure codes like Code of Civil Procedure, Criminal Procedure Code and Indian Evidence Act apply to the nyaya panchayats.
- ❑ But they have power to call witnesses and the parties for recording their evidence or producing any relevant document or fact.
- ❑ Unlike courts, they have the power to investigate the facts to find out the truth and at the same time they have the power to punish for its contempt. Lawyers cannot appear before a nyaya panchayats in any of its proceedings.

Advantages of Nyaya Panchayats over the regular courts

- ❑ They provide an inexpensive and expeditious mechanism to settle disputes.
- ❑ They provide relief to the ordinary courts as they lift the part of burden of judicial work on their shoulders. In a way, they are emerged on solution to the problem of mounting arrears of cases before the courts.
- ❑ They provide justice at the door steps for the village folks.

- ❑ They provide protection to the local customs and traditions.
- ❑ Panchayat System has a great educative value for the villagers.

Disadvantages of Nyaya Panchayats

- ❑ They are faction ridden institutions manned by laymen. Justice provided by them is based on caste, community, personal or political considerations. Therefore, chances of injustice cannot be ignored.
- ❑ It has been seen that panchs are often corrupt, partial and behave improperly or rudely.
- ❑ They are laymen, therefore ignorant of law and they often give arbitrary and irrational decisions.
- ❑ One cannot ignore that casteism and groupings are major features of rural India and therefore the influence of these shades on the justice cannot be According to 77th Report of the Law Commission, wherein it observed that, it will be a backward step to revert to the primitive method of administration of justice by taking out disputes to a group of ordinary laymen ignorant of modern complexities of life and not conversant with legal concepts and procedures.

The Mehta Committee opposed the combination of judicial and executive functions in one body and also recommended qualified judges to preside over nyaya panchayat.

Suggestive Measures

Law Commission in its 114th Report concluded with the safeguards designed to ensure nyaya panchayats proper working and improvement. These courts are capable of playing a very necessary and useful part in the administration of justice in the country. Law Commission presented a new model for the establishment of nyaya panchayats.

The suggested model is as follows:

- ❑ There should be a panchayat judge and two lay judges in a Nyaya Panchayat. Where the panchayat judge should be legally trained person belonging to the cadre of judges to be specifically set up for the purpose.
- ❑ In order to select legally trained judge for nyaya panchayats the state shall constitute a special cadre

of Judges that is Panchayati Raj cadre of judges.

- ❑ The judges should be nominated not elected.
 - ❑ The-local jurisdiction of the Gram Nyayalaya would be over villages comprised in a Taluka/Tehsil.
 - ❑ There would be no monetary ceiling on its jurisdiction. A broad civil jurisdiction should be given, and the criminal jurisdiction should be equal to that of a judicial magistrate of first class.
 - ❑ The Nyaya Panchayat would follow a simple procedure to dispose the cases.
 - ❑ Neither the Code of Civil Procedure, 1908, nor the Indian Evidence Act, 1872 is to be applied in its procedure.
- ❑ In criminal trials, the Code of Criminal Procedure, 1973 is to be applied but Indian Evidence Act, 1872 should not applicable.
 - ❑ Lawyers should be permitted to appear before the Nyaya Panchyats.
 - ❑ No appeal shall lie in civil cases from the decisions of the Nyaya Panchayats. But a revision petition lies to correct errors of law which may have affected the decision of the Nyaya Panchayats to the district courts.
 - ❑ In criminal case, an appeal would lie to the session's courts against the decisions of the Nyaya Panchayats in which it was imposed a substantive sentence of imprisonment.
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