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Law Ministry: Nyaya Panchayat Bill is 'Unconstitutional' *Akshaya Mukul*

With the Gram Nyayalaya Bill currently with the standing committee of parliament, the law ministry has rejected panchayati raj ministry's Nyaya Panchayat Bill on the ground that it went against constitutional provisions.

However, supporters of nyaya panchayat cite various rulings by the Supreme Court to drive home the point that it is not unconstitutional. They cite the SC ruling in State of UP etc Vs Pradhan Sangh Kshetra Samiti and others.

The SC had said, "Admittedly, the basis of the organization of nyaya panchayats under the Act is different from the basis of the organization of gram panchayats, and the functions of the two also differ. The nyaya panchayats are in addition to the gram panchayats. The Constitution does not prohibit the establishment of nyaya panchayats. On the other hand, the organization of nyaya panchayats will be in promotion of the directive principles contained in Article 39a of the Constitution." As for the law ministry's objections, it pointed out that functions outlined in the draft bill suggests that nyaya panchayats, apart from mediation, would also adjudicate a large number of civil and criminal cases. It argued that even civil courts, as per section 89 of the CPC, were required to take steps for mediation, conciliation and arbitration.

The ministry said that for the purpose of arbitration, there was Arbitration and Conciliation Act, 1996, for which rules had been framed by a committee set up by the apex court. Therefore, law ministry said, nyaya panchayats would not be part of local self-government as panchayati raj ministry contends but would become part of subordinate judiciary at the village level.

Coming to the composition of nyaya panchayats, which would have 11 elected members, law ministry objects to members not having any legal or judicial background. Concept of giving judicial powers to elected members does not find any place in our constitution. Judicial independence and its separation from the other organs of the state is the basic feature of our constitution. Judicial independence and its separation from the others of state is the basic feature of our Constitution. Article 50 provides for separation of judiciary from the executive, "the law ministry said, citing SC rulings in SC Advocates-on-Record Association vs. Union of India and C Ravichandran Iyer v Justice AM Bhattacharjee cases. Law ministry said that in the All India Judges Association v Union of India case, SC had held that separation of judiciary from the executive, as ordained by Article 50, also required that even judicial appointments at the lowest rung be made in consultation with the HC. The law

ministry is also against the minimum qualification for becoming a nyaya panchayat as stipulated in the bill—that a person should be above the age of 25 and should not be a member of any political party. Considering the vast corpus of laws over which nyaya panchayats would have jurisdiction, the law ministry again cites SC orders that say judges should have experience of practicing as advocate in Bar.

The ministry also cites the Constitution (Article 243G) which states that only such powers can be given to the panchayat which are necessary to enable it to function as an institution of self-government. “Judicial function is not part of an institution of self-government,” it said. The ministry said the Bill does not specify if nyaya panchayats shall have powers of judicial magistrate in respect of bail, remand and disposal of case property.

(Courtesy: The Times of India, July 8, 2007)

E-Governance Services at People’s Doorsteps

Lucknow: In a move designed to provide e-governance services at people’s doorstep, nearly 17,909 common service centres will be established in clusters of villages across Uttar Pradesh in the next couple of years. This will be done through private service providers.

It is estimated that the common service centres would open up job opportunities for 50,000 jobless youth, particularly the rural unemployed. Information related to animal husbandry, agriculture, trade, tourism, transport and job openings would be available at the service centres.

Since information technology is not available at the block level in the State, a State-wide area network from the Capital in Lucknow to the block level called Uttar Pradesh State Wide Area Network (UPSWAN) would ensure 2 mbps bandwidth connectivity up to the block level. This would be accomplished in the next one year.

In fact, the U.P. Government has several other plans lined up for expanding the information network. According to Principal Secretary (information Technology) V. N. Garg, the Government has decided to provide e-governance at the district level also. Elaborating, he said, there were 384 sections in the State Secretariat but only one Internet connection was available with the head of the department. Now the Government has decided in principle to provide 384 computers, which would be equipped with Internet connection, Mr. Garg added.

A pilot project, dubbed the e-district project, is also on the anvil. To be funded by the Union Government, the pilot project will cover six districts of Rae Barali, Sultanpur, Sitapur, Gorakpur, Ghaziabad and Noida (Gautam Buddha Nagar). Mr. Garg said the e-district project would facilitate in providing e-governance service at the district level. Another project to be taken up with Central assistance is e-procurement, which is the other name for the computerized tendering system for government purchases. Initially, PWD, Irrigation, Medical and Health, Information Technology, Industrial Development and Printing and Stationery departments would be covered by November this year. The remaining Government departments would be covered by January 2009.

Meanwhile, 33 new websites of different Government departments were launched by the State Chief Secretary, P.K. Mishra. Thirteen other departmental websites, refurbished by the UP Development Systems Corporation and national Informatics Centre, were also launched by the Chief Secretary. The new websites have been developed by UPDEDCO and NIC.

Mr. Mishra said the objective was to ensure transparency and responsiveness by making available information to the public on the net.

(Courtesy: The Hindu, September 2007)

Decentralisation in danger

The amendment to Panchayat Raj Act violates the 73rd constitutional Amendment

Kavita Ratna

In the past, Karnataka was hailed as a trail blazer in decentralisation of governance. It served as a role model when the Panchayati Raj system was scaled up in the entire country.

However, for the past few years gram panchayats in Karnataka have been endangered. A new threat has appeared in the form of the Karnataka Panchayat Raj Amendment of April 2007 recently passed in both houses of the Karnataka Legislature.

It blatantly violates the authority and mandate of the Panchayats as it imposes conditionally on the power of the Panchayats to identify beneficiaries – and hands over this power to “any Committee or authority of the Government constituted in this behalf”. This amendment violates the 73rd Amendment of the Constitution and also several legislations and orders passed by the State that highlight the actual transfer of powers and functions to the three tiers of Panchayats.

Persistent moves

History shows that the road to democratic decentralisation has always been strewn with mammoth hurdles. There have been extremely well orchestrated and persistent moves from the higher ups to curtail the scope and strength of local governments. The recent amendment is one such. The rationale of the legislature for the tabling it is based on the premise that “the gram panchayats have not been functioning effectively, which has affected the implementation of (these) programmes”, with special reference to the implementation of the Ashraya Scheme.

It is significant that before the amendment was tabled, there was no public debate on it. It is equally important to note that the Legislature Assembly passed it with a significant majority. In response to this silent confiscation of power, a huge state-wide Movement “Panchayati Raj Hakkottaya Andolana” has been launched to oppose this amendment and to

demand the retention and strengthening of the powers of the Panchayat Raj and the grama sabhas. Over 80 federations of Panchayat members, institutions and individuals have come together for this purpose, which is rapidly gathering momentum. On June 29, the members of the Andolana closed down their offices as a mark of protest against the amendment and to reclaim their right as representatives of local governments.

MLAs’ views

As a part of the campaign, 120 legislators were contacted. More than half of them, from all political parties, were unequivocal in their support to the amendment. According to a few, the members of the Panchayats were illiterate and they did not have the knowledge to select beneficiaries. They also alleged that the members were misusing power and misappropriating funds at the panchayat level. But, there is no evidence to substantiate this claim. No list of such grama panchayats has been made available to the panchayats and the citizens of this state in support of their view. Experience clearly shows that the gram panchayats and the members of the gram sabhas, because of their proximity to the people of the gramas, are advantageously positioned to identify the deserving beneficiaries for all schemes including housing. They have ensured that favouritism, preferential treatment and nepotism are practically non-existent.

A ray of hope is that there were 50 legislators who were against the amendment. They have strongly stated that the amendment was illegal. The power to choose the beneficiary is the sovereignty of the grama sabha. The role of the legislators is to formulate legislations, not implementing programmes, they have clarified.

The gram panchayats of Karnataka deserve a forum to state their defence and explain their side of the story. They also have to be actively involved

in finding solutions to their problems and to strengthen the functioning of gram panchayats. Instead of making allegations about the inefficiency of the panchayats, in order to justify the violation of their Constitutional rights, the state should taken on

the responsibility to build the capacities of the local governments that are closest and so most accountable to the people.

(Courtesy: Deccan Herald, July 3, 2007)

**Village Panchayat chiefs seek more powers
They also sought more resources from the State Government
R. K. Radhakrishnan**

Thiruvannamalai: Village panchayat presidents have sought more powers and resources from the State Government at a zonal meeting organised here on Friday.

“Give us the responsibility of issuing community, birth and death certificates. Give us a salary. Give us more money”, said T.S. Arumugham, a retired school teacher, panchayat president in Mathur in Krishnagiri district.

He was not alone in the demand for more powers for the last tier of governance. Most of the 71 panchayat presidents who spoke at the zonal meet wanted Local Administration Minister M.K. Stalin to make sure that the common problems of villages were solved.

The issues raised included water scarcity, lack of transport and medical facilities, a further reduction in power tariff, more funds for emergency use, greater say in implementation of schemes such as the free colour TV and free gas and LPG stove programmes and enhancement of money given to build houses under the Indira Awas Yojana (IAY).

Mr. Stalin and the Rural Development Secretary, Ashok Vardhan Shetty, said action had been initiated to solve many of the long-standing problems.

As many as 7,500 of the 12,618 panchayat presidents did not have a phone connection. They

would get one in the next two months. On the IAY scheme, Mr. Stalin said he had taken up with the Centre the need to increase funding for construction of houses. There was nothing much that the State Government could do on this.

Bommapalli panchayat president Vijayan wanted the power to sign cheques that are vested exclusively by the president to loud claps from the audience of 4,585 village chiefs. (Now the vice-president too has to affix his signature). When the issue was raised again by another president, Mr. Stalin asked who else could sign the cheque in the place of the vice-president. One president suggested that the Block Development Officer could. Mr. Stalin asked him if he trusted an official more than an elected representative.

Another president wanted educational institutions to pay tax to the village. Food Minister E.V. Velu, who was in charge of organising the meet, said that he ran educational institutions and paid tax to the local village based on the demand notice the village sent to his institutions. Other presidents should send such tax notices, he said.

An average of 93 percent of the village chiefs from Villupuram, Kancheepuram, Tiruvannamalai, Krishnagiri, Tiruvallur, Cuddalore and Vellore attended the meeting. Kancheepuram recorded the highest turnout – 632 of the 648 elected presidents participated.

(Courtesy: The Hindu, August 4, 2007)

The emerging power of panchayats
KARNATAKA: 60 years of Independence
V. K. Nataraj

Amidst the hype surrounding information technology and Bangalore, it should surprise no one if Karnataka's innovations in other spheres receive short shrift. Three such areas are decentralisation through panchayats, land reforms and the backward classes movement. It is useful to appraise the nexus among these three and examine the contribution in particular of participatory governance through panchayats.

Earlier experience

Generally Panchayati Raj Institutions (PRIs) evoke memories of Ramakrishna Hegde and Abdul Nazir Sab and the achievement of the State's first non-Congress government in fulfilling a major pre-poll promise.

While the work of this government, and especially that of Nazir Sab, was admirable, it needs to be remembered that the State had some experience of decentralisation earlier. The Taluk Development Boards constituted under the 1959 Act had performed well. It is fashionable today to ignore this on the ground that the Boards were agencies designed to execute development work and not political institutions. Yet they opened up political spaces for more representation and afforded an opportunity for leadership to develop at the sub State level. Above all, they must have helped in creating a helpful pitch for the Hegde Nazir Sab innovation to be launched.

Not to be forgotten is that as far back as 1964 the State had formulated a panchayats Bill, which in some ways anticipated what the 1983 Act brought in, admittedly with more vigour.

Two other features

These apart, there are two other features of panchayats that deserve some attention. One is that the backward classes movement that was active in princely Mysore from the early years of the last century also made a positive contribution to the field of governance.

Particularly significant is the movement in the 1970s that undoubtedly led to far greater representation of the numerically smaller castes than before. Above all these classes became 'politically conscious'.

It is likely that this development spurred the subaltern classes to seek opportunities in governance. The framework of devolution introduced by the enactment in 1983-85 was the product of genuine commitment supplemented by the demands advanced by the political calculus.

Land reforms

The State's land reforms also deserve consideration in this context. Even the 1974 amendment to the Land Reforms Act was not as far reaching as it is sometimes made out to be. The reforms do not compare favourably with what took place in West Bengal in the 1970s, but they had a few achievements to their credit. One is that the Land Reforms Tribunals constituted post – 1974 had to have four nominated members, including one from the Scheduled Caste/Scheduled Tribe category. This institution too created more space for the subaltern classes in governance. All in all, therefore, the devolutionary innovations in the State were a product of commitment as well as a shrewd assessment of the political calculus.

Legislative profligacy

An interesting dimension of panchayati raj in Karnataka is what may be termed legislative profligacy. Unlike West Bengal, which has managed with a legislation enacted by the Congress in 1973 – of course, amended substantially – Karnataka has introduced a much larger number of amendments. Parallel bodies exercising authority that should legitimately belong to panchayats continues to this day.

The latest in the series of interferences with the authority of panchayats is that the gram sabha's power to identify beneficiaries under housing

schemes has been taken away. A problem with repeated amendments to the panchayat structure is that it may have little time to drop anchor.

Seen as a threat

However, the attempts to whittle down the power of panchayats ought to be seen in a more dialectical

perspective. It is recognition of the growing power and strength of the PRIs that, not unnaturally, are perceived by the political leadership at the State level as a threat. In that qualified sense, the emerging conflictual relationship between the State and sub-State levels is a sign of health.

(Courtesy: The Hindu, August 12, 2007)

Studies on Panchayat Raj Institutions commissioned

The Centre has commissioned a study for evaluating the status of women members in panchayat raj (PR) institutions and also municipal bodies across the country. Speaking after inaugurating a workshop on “Women in Panchayat Raj” organised by the Karnataka Panchayat Parishat’s women’s wing at Ambedkar Bhavan in Bangalore, Mr. Manishankar Aiyar, Union Panchayat Raj minister, said that the survey will be conducted by Ace Neilso and after scrutinising the survey report a final report on this will be submitted by Prof. Neerja Gopal Jayal, Head, Centre for Law and Governance, JNU, New Delhi. Similarly, Prof Yogendra Alagh of Institute for Rural Management, Anand, has been asked to conduct an independent evaluation of panchayats’ status. The reports will enable us to get a scientific view of both the status

of women as well as panchayat raj institutions in the country. The reports will be submitted on April 24, 2008, he said. Aiyar said, both the studies will enable the Centre to take steps to end exploitation of women which has been going on for the last 5,000 years.

Mr. Aiyar suggested the State government to commission a similar study on the status of women in panchayat raj institutions as it is not possible for a national-level survey to carry out an in-depth study of any one particular State. He appreciated Karnataka for its path breaking initiative to give 33 per cent representation for women in the PR institutions.

(Courtesy: Deccan Herald, August 14, 2007)

“Involve panchayats for efficiency of ICDS”

Shruba Mukherjee

Identifying poor governance and low motivation levels as causes for the inefficiency of the Integrated Child Development Services (ICDS), a group of economists led by Jean Dreze has urged the Planning Commission to involve panchayats in the programme aimed at improving health and nutritional status of children.

Involve Communities

Recommending an overhauling of the Integrated Child Development Services, one of the largest public service delivery systems in the country, the experts said decentralisation and involvement of communities was the first key aspect that should be considered in the 11th Plan.

The recommendation comes at a time when the National Family Health Survey has revealed that one in every three malnourished children in the world lives in India.

Taking up the issue of malnutrition on an emergency basis the Supreme Court had also directed the Centre and the state governments that there should be functional anganwadi centres for children and pregnant women in every settlement.

It also asked the governments to ensure that supplementary nutrition was provided to each child under the age of six years and to all pregnant and nursing mothers.

The current allocation for the Integrated Child Development Services is Rs.1600 crore, which should ideally be increased to Rs.9600 crore if the coverage has to be improved.

Inadequate

The present coverage is also inadequate as there are only six lakh anganwadis in the country whereas 17 lakh anganwadis are required for universal coverage of the scheme.

The expert group, which also included activists like Dr.Aun Gupta, Dipa Sinha and Bairaj Patnaik, observed that there were large areas of untapped potential for community contribution.

“Except for rare instances like the Mitanin programme in Chattisgarh or the work of the Rajmata Jijua Mission – in Aurangabad, the

involvement of communities and Panchayats has rarely gone beyond sub-contracting tasks like the cooking of the meals with very little real financial or other powers”, the experts said in their report.

Mobilisation

They also observed that community mobilisation was required to create an atmosphere for more appropriate child care practices and empowerment of the local community, especially families facing marginalisation or social exclusion.

Community monitoring of Integrated Child Development Services could also help in ensuring greater regularity and quality and in building a more functional relationship between the anganwadi worker and the community.

(Courtesy: Deccan Herald, September 13, 2007)

Gram Nyayalayas Bill Likely in Next Session Focus on adjudication at the grassroots level

Jaipur: The Gram Nyayalayas Bill, 2007, pending before the Standing Committee of Parliament, is likely to come up in the next session. The purpose of the Bill is to create a grassroots level adjudication system, to be the lowest level courts in the country. The large number of pending cases in the lower judiciary is the reason behind the move to create a new layer.

“More than two crore cases are pending before the subordinate courts in the country at present. The new legislation is to provide speedier justice to people at lower levels,” said E M Sudarsana Natchiappan, chairman of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, here on Monday. Mr. Natchiappan, along with other members of the Committee-Tarlochan Singh, Virendra Bhatia, Shilendra Kumar and S. Rehman Baig interacted with media persons at the end of their three day visit to Rajasthan capital.

“We have already held consultations with a good number of States, political parties and persons from

higher bureaucracy, including Chief Secretaries and Law Secretaries, on the Bill. On the basis of the feedback and discussion the Committee would be submitting its report to both the Houses of Parliament, most probably in the coming monsoon session,” Mr. Natchiappan said.

Judges would man the Gram Nyayalayas, numbering 5,000 in all. These courts would be positioned below the tehsil level but above the panchayats, he informed. “The judicial officers would man these courts. In States where Nyaya panchayats are in existence, these courts would be just above them,” Mr. Natchiappan pointed out. The Gram Nyayalayas too would have the system of mediation at the first stage as in the Lok Adalats. The courts would deal with criminal cases those involve up to one-year imprisonment as well as civil cases, he said. The funding of the Nyayalayas would be cent per cent by the Centre in the case of non-recurring expenses and 50 per cent in recurring expenses for first 3 years.

(Courtesy: The Hindu, July 3, 2007)

Governor Returns Bill to Curb Panchayat Powers in Karnataka

Karnataka's move to curb the powers of gram panchayats has been shot down by Governor TN Chaturvedi with a stinging criticism that the step is uncalled for. In an unusually long message to the State legislature, while returning the Bill to amend the Karnataka Panchayat Raj Act, the Governor said he wanted the legislators "to reconsider the need, propriety, timeliness and relevance of the Bill."

The 10-page message questioning the rationale for amending the Act terms the step as 'retrogressive' that runs counter to the process of democratic decentralization. The controversial amendment Bill was passed by the State legislature during the Budget session earlier this year amidst stiff opposition from panchayats, civic groups, a section of the Opposition and smaller political groups in the two Houses.

The amendment takes away the powers of the gram panchayats to select beneficiaries for various

Central and State welfare Schemes. The most contentious provision of the Bill was to deprive panchayats of the power to select beneficiaries for houses under the State sponsored 'Ashraya' (shelter) scheme.

The amendment sought to vest this power with a committee headed by members of the legislative Assembly (MLAs) on the ground that panchayats had failed to discharge the task properly.

It is not known on what basis such a conclusion has been arrived at. No committee, official or otherwise, was appointed to come to such a drastic conclusion, when we in the State of Karnataka rightly take pride about the working of our gram panchayats and panchayati raj in general," the Governor said.

(Courtesy: The Pioneers, July 21, 2007)

Panchayats Need Wider Revenue Base

NEW DELHI: The legal and policy regime should be reoriented to help panchayats widen their revenue base, Union Panchayati Raj Minister Mani Shankar Aiyar told the Lok Sabha in a statement.

Better coordination was required between panchayats and the State government as the former's taxation powers were governed by the State Panchayati Raj Act, Mr. Aiyar said in response to a calling attention motion on the "Need to strengthen the panchayats financially in order to fulfil their constitutional obligations and to discharge their duties effectively."

The statement, tabled in the House, said the Ministry wanted the States to introduce a Panchayat Sector Window in their budgets for each department concerned with the functions devolved to the panchayats to show the funds assigned to each tier. The panchayats needed adequate untied funds to execute their assigned public services, he said. Quoting a study by the National Institute of Public

Finance and Policy, the Minister said that although there were 66 kinds of fees and taxes levied by panchayats in different States, most existed on paper only. Expanding the revenue envelope involved a re-look at the tax powers assigned to panchayats, a reliable data and information system, capacity building to administer and enforce the tax and adopting a set of incentives and disincentives aimed at increasing the collections. The Institute estimated that the current revenue of panchayats was Rs. 3,000 crore and without reforms in the taxation structure, improving collection would fetch only Rs. 10,000 crore, Mr. Aiyar said.

A committee with Secretary as co-chair has been constituted on the direction of the Cabinet Secretary to review the major centrally-sponsored schemes to ensure the key role of the panchayats in their implementation.

(Courtesy: The Hindu, September 7, 2007)

Panchayats Turn into Kangaroo Courts **Rohit Mullick and Neelam Raaj**

Times have changed and so have sexual mores but in prosperous Haryana, there's one regressive institution that refuses to embrace modernity. Passing by a gathering of one such band of men-women are never part of this all male club—you'd think this was an innocuous gathering of village elders. But these are the all powerful khap panchayats—village elders grouped along caste or community lines and motivated by the need to perpetuate a feudal and patriarchal order. Usually upper caste with land as well as muscle power, these self-styled guardians of a medieval morality dole out "justice" at will. They issue fatwas to ostracise families, declare marriages void, make man wife brother and sister and order abortions. In their outmoded system of beliefs, a woman falling in love with a man from the same gotra is the worst transgression and this crime translates into immediate punishment. The guilty can be ostracized, banished from the village, made to drink urine, paraded naked, beaten up or killed.

Four months ago, one such khap panchayat in karora village in Kaithal district came down on Manoj and Babli. Just 23 and 19 years old, it was a tale of young love uniting in the face of opposition. But instead of living happily ever after, they ended up dead. Their decomposed bodies were fished out from a canal in Narnound town in Hisar district just two months after they tied the knot in Chandigarh. Both were kidnapped and brutally murdered, allegedly by family members, on the orders of their village khap panchayat which justified the killing on

the ground that it was incest as the couple belonged to the same Banwala gotra.

Ram Swaroop Singh, leader of the Sheoran khap which covers 84 villages, is unapologetic about their intolerance of deviance. "You can think whatever you like but same- gotra marriages are unacceptable to us. A marriage within a gotra is incest and that is a crime to be punished."

Ajit Singh, "a sociologist who has researched khap panchayats, says, "The rise in number of Khap pronouncements means that more and more young people are revolting against the norms fixed by these panchayats". Sociologists believe that Haryana is witnessing a conflict between traditional and urban mindsets and only a revolutionary social change can get rid of feudal customs and laws. "Haryana is still not ready for that. It will have to wait a while longer," adds Singh.

But why the sudden increase in fatwas? Researcher Prem Chudhary says there has been a resurgence of caste panchayats. "The official gram panchayat includes people from all ages and castes so the village elders, mostly upper castes, feel they are being marginalized. This is their way of reasserting themselves," she points out. By preying on fears of a western cultural invasion, these khap panchayats have increased the scope of collective action. She cites a common refrain: '*ladke haath se nikal gaye, chhoriyan ne bacha lo*'

(*Courtesy: The Times of India, September 9, 2007*)

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