

## **Note on Local Courts Vs Elected Nyaya Panchayats**

I have carefully studied the paper by Sri D Bandopadhyay – “Nyaya Panchayats – The Unfinished Task”, published in Economic and Political Weekly (December 17, 2005). This paper is a passionate plea for decentralized, accessible, people-friendly justice system. Sri Bandopadhyay also argued that creation of 2000 new courts and 4000 judges as Gram Nyayalayas would merely mean creation of one extra court per taluk, and these courts would be as distant, expensive, inaccessible and cumbersome as the present court system. He therefore advocated creation of 100,000 Nyaya Panchayats (one for two gram panchayats), and appointment of these magistrates by election with reservation of offices with rotation for various social groups to ensure fair representation. He argues that accountability through reelection after expiry of term would be a great safety measure against palpably biased judgment.

The following are my considered views on the issue:

- 1) The broad thrust of Sri Bandopadhyay’s argument is unexceptionable. We need people-friendly, decentralized, accessible, speedy, effective, inexpensive (both for the litigant and the state), accountable local justice system. The problem of Indian justice system is not merely huge pendency of cases and prolonged litigation and trials. A vast number of injustices and disputes never reach our courts, because justice system is inaccessible and expensive, and there are inordinate delays. Therefore most poor Indians either suffer injustice silently, or resort to extra-judicial, sometimes brutal means. One of the main causes of rise of organized criminal groups is to meet the unmet demand for justice. These groups provide rough and ready justice, and enforce it through violent and brutal methods if necessary. Sri Bandopadhyay cited the people’s courts established by People’s War Group in Andhra Pradesh, and the appreciation of local poor for the access and speedy relief. This is one telling illustration of violence becoming the arbiter of justice when there is judicial failure.
- 2) Sri Bandopadhyay’s criticism of Gram Nyayalayas is essentially based on news reports quoting the Law Minister. He argues that 2000 new courts and 4000 judges as Gram Nyayalayas will be as distant, expensive, inaccessible and cumbersome as now. If the new law merely creates 2000 new courts with 4000 judges, but with the same dilatory, cumbersome and incomprehensible procedures, Sri Bandopadhyay’s arguments would be valid.

Keeping this in view, the NAC recommended, and reiterated while suggesting Amendments to the draft Bill, the following features:

- There shall be at least one local court for every 50,000 population. Therefore about 16,000 or more new courts will be created in rural areas.

- There will be honorary magistrates for fixed, renewable term, and not part of permanent judicial bureaucracy.
- The cost of establishment will be very low, as local infrastructure will be utilized and no new staff or vehicles will be added.
- The procedures will be simple and uncomplicated.
- The proceedings will be necessarily in local language.
- The local court will be a mobile court, visiting the villages or scene of dispute and dispensing justice locally. This will both ensure access and prevent fabrication of evidence and perjury.
- Verdict shall be delivered within 90 days.

Therefore, the local courts, as proposed by NAC, are people-friendly, accessible courts of justice with simple and speedy procedures, guaranteeing justice in a time-bound manner.

3) NAC's proposals have also taken cognizance of the concern of lawyers, jurists and judiciary, and therefore the following recommendations have been made.

- Lawyers are permitted to represent clients, if they so wish.
- Only honorary magistrates would be appointed, without other lay judges, so that the costs are kept low, and the process does not become cumbersome and dilatory.
- There is provision for one appeal, and if need be, a revision. Appeal also has to be disposed of within a prescribed time of 180 days.
- There is provision for inspection by higher magistrates.
- Appointment and removal, and other forms of control and accountability are left to the High Court which is the apex court at the State level with administrative control of all subordinate courts.

By these provisions separation of judiciary from executive is ensured. Also fears of partisan influences and undue caste and political considerations colouring justice delivery have been effectively addressed. The concerns that local courts would be Kangaroo Courts acting indiscriminately to protect local vested interests and hurt the poor and disadvantaged have also been fully addressed by NAC proposals and recommendations.

4) Sri Bandopadhyay argues for 100,000 elected Nyaya Panchayats (one for two Gram Panchayats), and the principle of reservation with rotation applied to these elections. He also argues that prospects of reelection would be adequate safeguard against palpably biased judgement. He cited the US practice of electing judges in 23 of the 50 States. However, such a Nyaya Panchayat concept will run into the following difficulties.

- From the figures cited by Sri Bandopadhyay himself, the average annual number of filing of new cases in the lower courts is around 1.43 crore, against which the annual average disposal is 1.34 crore. Thus about a million cases are added every year to the pool of pending cases. Given this situation of a million new cases remaining

unresolved every year, creation of 100,000 Nyaya Panchayats (presumably with several lay judges) through a nation-wide election process with all the complexity and cost such an election involves does not seem justified.

- As I have argued before, certainly many 'missing cases' which now never reach courts would be filed before the accessible local courts. But even that additional load does not justify the creation of 100,000 new Nyaya Panchayats through costly and complex election. We must recognize that at present, there are about 13000 magistrates of all kinds in the country, and they are disposing of 1.34 crore cases an year – at about 1000 cases per magistrate per year. NAC's proposal is to create about 16,000 new people-friendly, accessible mobile courts with simple procedures. Therefore these 16,000 magistrates, if appointed as proposed by NAC draft, would easily be able to handle at least 1000 cases per year, given that their cases would be simpler, procedures are uncomplicated and verdict shall be delivered within 90 days. Thus at least 1.6 crore simple cases can be disposed of by local courts every year, as against the current undisposed case load of a million a year. Therefore, one local court per 50,000 population should be easily able to speedily resolve all pending cases, and likely new cases which will surely come before the courts once accessible local courts with simple procedures are established, and people's faith in justice system is enhanced.
- While decentralized, accessible and speedy justice must be seen as a part of decentralized governance, it would be misleading and inaccurate to confuse such local justice system with elected local governments. Given the distortions of electoral process and increasing perception of partisan exercise of power, a system of elected Nyaya Panchayats would be open to serious assaults from many quarters. Once justice system loses credibility, or easy accusations are made on a daily basis as part of political mudslinging and electoral campaigns, rule of law will be severely crippled, further eroding the legitimacy of authority. Therefore, while Sri Bandopadhyay's arguments are fully in tune with the spirit of democratic constitution, we need to fashion practical instruments which will serve the purposes of accessible, speedy, people-friendly, efficient justice without the risks of undermining credibility and inviting implacable hostility and resistance of large sections of the population, lawyers' community and judges.
- We should also recognize that these people-friendly local mobile courts will be part of the formal justice system. Therefore, they will not preclude the operation of informal dispute settlement mechanisms by mediation without lawyers, provided both parties consent to them. The local courts as proposed by NAC are intended to be the lowest courts

with exclusive jurisdiction, but with simple, inexpensive, credible, accountable, people-friendly procedures.

- 5) On balance, the NAC's proposals for a system of local courts, one for at least 50,000 population, with simple, summary procedures, functioning as mobile courts with access to people and discouraging fabrication of evidence, guaranteeing justice in 90 days would serve the objectives. At the same time, making these courts part of the established justice system with proper institutional checks and balances would insulate them from partisan pulls, political compulsions and electoral calculus. This would also be in keeping with the established constitutional principle of separating judiciary from the executive, while ensuring effective accountability of these honorary magistrates.

Therefore, I would urge the Chairperson of NAC to ensure that the draft Bill is amended as recommended by NAC, and enacted speedily as law. While these 16000 new courts will be of low cost, there would still be additional cost incurred – probably upto Rs 500 crore per annum for all the States put together. In order to help the States facing severe financial stress, NAC may recommend that this cost be met by the Union Government for a period of five years, and the States can progressively bear the additional cost. Such an additional burden is extremely low, considering the benefits to the poor and disadvantaged, and the importance of the state guaranteeing due process and accessible, affordable and speedy justice to all.

These observations may kindly be placed before the Chairperson of NAC for a considered decision.