

# Gram Kachahary in Rural Bihar Deepening Decentralised Democracy?

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Bihar has an innovative system of rural local governance through judicial institutions led by the people. Each gram panchayat has a *gram kachahary*. How these institutions work, the challenges they face, while settling disputes, and the ways these challenges could be met are examined.

Although the 73rd amendment to the Constitution designated panchayats as institutions of self-government, they have not emerged as such because of want of functional, financial, and administrative powers at their disposal. Sharma and Chakravarty (2018) rightly observed that the rural local governments could not be integrated into the broader federal system in India. Two reasons are responsible for this state of affairs. First, the powers between states and the union have been divided as per the Constitution, whereas powers to rural local governments have been delegated by the state legislature. The former arrangement may be called distributory and the latter, devolutionary. As far as empowering the panchayats is concerned, the ball is in the court of the states and not in the Constitution. On account of this, different states have different levels of devolution of power to the panchayats. But that relates to developmental functions.

As the 73rd amendment to the Constitution is silent about judicial powers to panchayats, all states have not given judicial powers to panchayats; the exceptions are Himachal Pradesh, Punjab, Bihar and Uttar Pradesh (UP). In the case of UP, nyaya panchayats have been defunct from 1972 and these institutions were deleted from the State Panchayat Act. Bihar's case is unparalleled because here *gram kachaharies* (village courts, henceforth GK) have been constituted in each and every gram panchayat (GP). In this way, in each GP two systems of rural governance exists. The GP headed by a mukhiya looks after the developmental functions of the area, while the GK headed by a sarpanch looks after the judicial functions.

The core purpose of this article is to build awareness about the innovative

system of rural local governance through judicial institutions led by the people. After examining the working of these institutions, the article puts forward the challenges faced by these institutions while settling disputes locally and how these challenges could be met to harness optimum results from these institutions.

Participatory and case studies methods have been adopted in the study. Six case studies from north Bihar represented by Sitamarhi and south Bihar represented by Nalanda, Nawada, Bodh Gaya, and Patna were conducted. The case studies have been selected randomly. Besides collecting primary and secondary data from the field and from the state government, detailed discussions were held with sarpanchs, upa-sarpanchs, mukhiyas, panchs, officials, beneficiaries, and knowledgeable persons from these districts. Some representatives of non-government and civil society organisations were part of the interactions to understand the working and dynamics of these institutions.

## Features of the GK

The guiding principle behind the establishment of GKs is Article 39-A of the Constitution which says that

The state shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity ... to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

To translate this provision of the Constitution into reality, the Government of Bihar started village courts in the guise of GKs to provide people justice at their doorsteps in all 8,386 GPs across the state.

The system of GKs existed even before the Constitution came into force. The Bihar Panchayat Raj Act of 1947 made provisions for the establishment of GKs. Elections to the GKs took place, along with elections for the GPs, in 1952, 1955, 1962, 1965, 1972, and 1978. In those days elections to GPs and GKs were held every three years, but became erratic after 1965. No elections could be held for more than two decades till 2001 due to various litigations in courts. There was provision for 15 panches in the bench of

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the GK earlier. The sarpanch was elected by the panchs from amongst themselves. In other words, the sarpanch was elected indirectly in the state.

The existing Panchayati Raj Act was amended in 1993 in the light of the 73rd Constitutional Amendment Act. The main features of the GK are:

(i) Direct election of the panch by the voters of each electoral territorial constituency constituted on an approximate population of 500. The territorial electoral constituency of the GK is coterminous with that of the GP; (ii) direct election of the sarpanch by the voters of the GP on an approximate population of 7,000; (iii) proportionate reservation for Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) on the basis of their population; (iv) reservation of 33% for women; (v) election of upa-sarpanch from amongst the elected panchs; (vi) power to pronounce a verdict of three months' imprisonment; and (vii) power to impose a fine of up to ₹1,000.

The Bihar Panchayat Raj Act was amended in 2006, and additional provisions particularly on the compositions of GKs and powers and jurisdictions were made. These provisions are:

(i) Proportionate reservation in posts of member and chairpersons for SCs and STs on the basis of their population; (ii) maximum 20% of the total seats to be reserved for OBC; (iii) 50% reservation for women in all categories; (iv) direct election for panchs and sarpanchs under the control of the State Election Commission; (v) election of upa-sarpanch from amongst the elected panchs; (vi) GK shall endeavour to bring about an amicable settlement between the parties; (vii) no power of imprisonment; (viii) power to impose a fine of up to ₹1,000; (ix) provision of nyaya mitra (eligibility: three-year law degree from a recognised institution or university) to assist the GK in its legal functions; (x) provision of GK secretary; (xi) no court shall take cognisance of a case or suit that can be tried by a bench of the GK; (xii) cases that can be tried by a bench of the GK but instituted in judicial courts shall be immediately transferred to the bench of GK which has the jurisdiction; and (xiii) each suit or case will be generally disposed off within six weeks from the date of filing.

**Criminal jurisdiction of GK:** The following is the jurisdiction of the GK for criminal cases:

(i) Offences under Sections 140, 142, 143, 145, 147, 153, 160, 172, 174, 178, 179, 269, 277, 283, 285, 286, 289, 290, 294, 294A, 323, 334, 336, 341, 352, 397, 358, 374, 403, 426, 428, 430, 447, 502, 504, 506, and 510 of the Indian Penal Code, 1860; (ii) offences under the Bengal Public Gambling Act, 1867; (iii) offences under Sections 24 and 26 of the Cattle Trespass Act, 1871; (iv) except as otherwise provided, offences under the Bihar Panchayat Raj Act, 2006 or under any rule or by-law made thereunder; (v) any other offence under any other enactment, if empowered in this behalf by the government; and (vi) the GKs do not take cognisance of any offence in respect of which any proceeding is pending before a court of competent jurisdiction prior to the coming into effect of the act in 2006.

**Criminal power of bench of the GK:** As mentioned earlier, there is a provision for constituting a bench comprising the panchs to examine the case and give their findings. The following are the criminal powers of the bench:

(i) A bench of the GK, after hearing the parties and after considering the evidence adduced by the parties, shall record its decision in writing, and shall sentence any offender convicted by it to pay a fine not exceeding ₹1,000; (ii) in the case of failure to come to a unanimous decision, the decision of the majority of the members of the bench will be the decision of the bench; (iii) in the case of equality of votes of the members of a bench present during the trial of a case, the sarpanch shall have a second or casting vote; and (iv) no sentence of imprisonment, simple or rigorous whether substantive or in default of payment of fine shall be awarded by any bench.

**Criminal powers of the sarpanch:** In the case of apprehension or breach of peace or disturbance of public tranquility and desirability of imminent and immediate prevention or speedy remedy, the sarpanch may direct any person to abstain from a certain act or to take action with respect to a certain property in his possession or

under his management, subject to confirmation of the order by the subdivisional magistrate. Such an order shall remain in force for 30 days and shall be promptly given effect to by the local authorities.

**Desirability of the gram kachahary:**

(i) When administrative and development activities are being taken to the village level by the state, a proper judicial system also needs to be provided at their doorsteps; (ii) even police stations are not within easy reach of people in every panchayat. Police stations have a much larger jurisdiction; (iii) no single panch is competent to hear any case. The rival parties are to nominate one panch each of their choice in the bench of the GK so there is little possibility of any element of favouritism or partiality or bias. The presence of members from the SC, ST, OBC and a woman in the bench ensures that the bench remains sensitive to the problems faced by the suffering party; (iv) as far as practical, cognisable offences are not kept under the purview of the GK. The notable offences that can be tried by the GK include offences regarding public nuisance, damage to property, disturbance to public peace and tranquillity, obstruction of common water, obstruction in free movement of a person, killing of animals, intimidation, refusal to obey the orders of a public servant competent by law, etc; (v) appeal only before the larger bench; (vi) justice at the doorstep, especially to the poor and downtrodden sections of the society; (vii) leading or rebuttal of evidence without any delay; (viii) no legal practitioner to be allowed unless both the parties agree and the GK or its bench grants permission; (ix) emphasis on arbitration/reconciliation; and (x) no power of imprisonment, hence even by default, no possibility of any chance of oppression.

**Functioning of the GK**

The constitution of GKs in Bihar is unparalleled across the country. Broadly, GKs have dealt with issues related to division of property and agricultural land, issues related to drainage and disposal of waste water. Most cases have been closed through arbitration and reconciliation using the skill of the people to counsel and make adjustments. The

functioning of the GKs may be summarised in the following ways:

**(i) Informal process:** Nanesh Paswan from Sarilputra village of Surajpur GK, in Salau block, district Nalanda had some land-related issues with his brother. He said that he approached the sarpanch to sort out the issue informally. The sarpanch met the brother and tried to sort out the issue but to no avail. The matter was sorted out when he approached the police. He said in disgust, "Nobody listens. Humanity has vanished." The GK takes time to sort out issues. People want an immediate solution and that is given by approaching the police. What emerged from this case is that the justice is police station centric. Sarpanchs who belong to marginalised groups do not have clout in rural local governance. So people in such areas approach the police station to sort out issues.

**(ii) Lack of awareness:** In Nawada district, the author interacted with a group of people belonging to the Mahadalit category in village Magheva, block Hasuwa. Bansi Rajbansi who was a member of the panchayat samiti was very vocal in this context. He said that the GK existed in the village only in name. Both the GP and GK are managed by a powerful section of the village. The sarpanch, GK secretary, mukhiya and nyaya mitra are one. As there is no panchayat office in the GP, meetings are held in the house of the mukhiya. No Mahatma Gandhi National Rural Employment Guarantee Act work is done in this village by the GP. Most of the work has been done in the village to which mukhiya of the GP belongs. This case showed that there is a lack of awareness among people about the system of rural local governance. There were 15 persons assembled there, but except for one person who was a member of the panchayat samiti, nobody said anything even after the author's assurances. They merely smiled and looked away.

**(iii) Members of GKs:** In Sitamarhi district, representatives of GKs and some beneficiaries were contacted to find out about the functioning and outcomes of the judicial system. First, the sarpanch, panchs and mukhiya of Rampurparori GP and GK opined that the GK has been functioning

satisfactorily in their GP. The population of this village is about 9,000 comprising OBCs, SCs, and STs. There are 17 panchs in this GK. Ramcharda Rout whose case was just settled in the GK was also contacted. His case was related to the construction of a toilet in his dwelling. His brother filed a case in the GK claiming that the land where his brother was constructing the toilet belonged to him. The GK got the land measured by a private amin by paying ₹1,000. The money was paid by the contending parties and not the GK. It was also pointed out that the GK charge ₹100 as a fee for admitting the case. However, the GK also takes an additional ₹100 from the respondent to meet other expenses like petrol, delivery of notices, etc. The GK decided that the land where the toilet was being constructed belonged to Rout. Both parties accepted the decision and the matter was resolved. The sarpanch has pointed out that the GK also take the help of knowledgeable and influential persons of the village in their work. It is interesting to note that both the mukhiya and the sarpanch belong to the Dalit community. When asked whether he felt any pressure from the OBCs or upper castes in performing his duties, he replied, "No." Both the mukhiya and sarpanch were educated and also aware about the rules and regulations of the functioning of the panchayats. Further, there does not appear to be much economic difference between the Dalits and OBCs in this GK.

**(iv) Continuing entanglements:** A meeting was also held with the sarpanch, some panchs, the GK secretary, and the GK nyaya mitra of Ranjeetpur Purweei, Dumra block, Sitamarhi district. They said that the GK tries its best to resolve issues through arbitration and reconciliation. They also emphasised that they took the help of knowledgeable and influential persons to sort out issues. The GK charged ₹250 from the person who submits an application. When it was pointed out that the fee is ₹100, they replied that ₹150 was used for other expenses like photocopies, travel, and so on. It was gathered from the discussion that the police station had been a major stumbling block in the GK's success in resolving disputes at the local level. The respondents opined that the police station

had been collecting money from poor people. The dominant section of the village community also want entanglements between and among various groups in petty matters to continue so that they remained at their beck and call.

**(v) Losing faith:** In spite of several requests, the sarpanch of Patna district did not turn up. The persons who in conversation with the author said that they never gave preference to GK's work. He never reached the office in time. The GK's secretary cannot read and write and on her behalf her husband, who works elsewhere, handles the work of the GK. In panchayati raj, it is called "pradhan patti"; in the case of the GK, it is called "sarpanch patti." The nyaya mitra does not come regularly in the GK. Here also, the GK has been charging ₹100 extra from the person who filed the case. The amin is given ₹1,200 to measure the land. Mukesh Kumar of the village had some issue with his relative regarding land. He approached the GK to resolve the dispute, but this could not be done by the GK as the police came into picture. Subsequently, Mukesh Kumar dropped the case because of the opportunity cost involved in pursuing the issue in terms of money and threat from dominant persons. It was also noticed that the sarpanch did not want to displease anybody so he hesitated in sending the notice to the concerned parties. Lale Babu Chaudhary, the panch from ward number two said that being a Dalit, he was respected in the GK and pointed out with alacrity that the GK has solved 37 cases relating to land, houses, and theft during the year. Satender Kumar Singh who unsuccessfully contested the mukhiya election in this GP suggested that the panchayats should mobilise their own resources as there is ample potential in the village to do so. This will let them have more autonomy in running the GK. It was pointed out that whenever the GK approaches the police for protection, the police does not turn up in time. In this way, people lose faith in the GK system and consider the police a better option.

**(vi) Missing support:** The author also visited the Fatua block headquarters of Patna district to meet the block development officer (BDO) to learn about the

functioning of GKs in the block. However, the BDO had gone to Patna to attend a meeting on the Swachh Bharat Mission called by the district magistrate. The author met some officials and asked them about the status of GKs. They only said, "Officers are not here." The author approached some persons who were around; one of them was the sarpanch of Usfa, Jitendra Kumar and another was the former vice-president (upa-pramukh) of Fatua block. Jitendra Kumar said that after the constitution of the Usfa GK in 2016, it has registered 72 cases mostly related to land. Out of these cases, 30 have been resolved and the rest are under hearing. He categorically said that "madad nehi milta; Gram Kachahary ke saath sotela vavyavhar kiya jata hai" (assistance is not provided to the GK and step-motherly treatment is meted out to the kachaharies). The main problem of GKs seems to be the police station. There is no coordination between GKs and the police station. There are 15 GKs in this block and there are three police stations located in the jurisdiction of the block. The police stations can easily help GKs particularly in those cases in which there is potential for quarrels between parties. The sarpanch further disclosed that he knew that their honorarium had been received in the block but it had not been paid to them.

The former vice president of the block pointed out that in the village both the executive body in the form of the GP and the judiciary in the form of the GKs coexist. This is a welcome system. But the judiciary is weak compared to the executive. This anomaly at the grassroots should be eliminated by empowering the GKs suitably with finances, administrative power and adequate infrastructure.

The narrative of the functioning of some of the GKs in some of the districts of Bihar revealed that the system of grassroots judiciary is innovative and unparalleled across the country. However, the system is not receiving proper support from the state government to optimise its potential by way of providing justice at the doorstep of the people. It is more sarpanch centric than the GK which comprises the sarpanch, upa-sarpanch and panchs. The insult to injury has been added by the role of the police station in the functioning of the GKs.

It is evident from this article that the GKs have been a comprehensive, sensitive, and accountable system at the village level.

### Challenges before the GK

The system of GKs is designed to resolve local disputes by negotiation and compromise in a cordial environment. These kachaharies have solved local issues by using local knowledge in a participatory mode. There are umpteen challenges before these institutions. Even the sarpanchs, upa-sarpanchs, and panchs are agitating for their demands. The challenges before these bodies and possible solutions for the same may be summarised as follows:

(i) There is no adequate infrastructure for these grassroots institutions for dispensing justice. Leave alone computers and the internet, all the GKs do not have a building where they can work. For example, out of 8,392 GKs, buildings are available in about 1,000 GKs, indicating that infrastructure facilities are available in merely 12% of the total GKs. The nyaya mitra and GK secretaries are essential for the activities of the GKs. It is surprising to note that in a quarter of the GKs there are no nyaya mitras and in 16% of the GKs, there are no secretaries. With these glaring vacancies, how can GKs function as they should? How should notices be delivered to the parties who are contesting a case? There is no mechanism for this. The panch and sarpanch themselves deliver the notices to the parties which is not fair. This challenge may be handled if the post of a chowkidar is created for this purpose or even employed on a contract basis.

(ii) As per the existing provision, a sarpanch's honorarium is ₹2,500 per month; upa-sarpanch is ₹1,200 per month; panch is ₹500 per month; nyaya mitra is ₹7,000 per month; and GK *sachiv* is ₹6,000 per month. It is ridiculous that the sarpanch and upa-sarpanch honorarium is less compared to government officials. The opinion, gathered while interacting with various people, is that the sarpanch honorarium should be ₹10,000 per month; upa-sarpanch ₹2,500 per month; and panch ₹1,200 per month. It should be linked with the consumer price index as in the case of government officials' pay.

(iii) The panch and sarpanch sangh (union) submitted a memorandum consisting of

21 demands on 25 February 2018 to the chief minister, Nitish Kumar. The main demands of the sangh, among others, are: (i) sarpanch designation should be elevated by giving them same powers as a magistrate; (ii) sarpanch, upa-sarpanch, and panch may be awarded pay and other facilities like pension, insurance, etc, as given to members of the legislative assembly; (iii) recruitment of amin, computer operator and chowkidar should be done without delay; (iv) regular training should be imparted to the GK's personnel in the state; and (v) basic necessities like motorable road, solar light, toilets, etc, should be provided to GK offices.

(iv) On the line of mukhiya and ward members of GPs, the sarpanch, upa-sarpanch, and panch should also be entitled to elect members of legislative council so that they can raise their issues in the council for the betterment of the functioning of GKs in the state. In this way, the position of these institutions would be enhanced.

### Conclusions

The 73rd amendment to the Constitution says panchayats are expected to prepare plans for economic development and social justice, including the 29 subjects listed in the 11th Schedule of the Constitution. But it has not laid out an arrangement to solve the issues which crop up in the preparation and implementation of such plans. Villagers approaching the already overburdened judiciary would not lead to rural development. However, in Bihar, the system of GKs resolving disputes through arbitration and reconciliation at the village level is unparalleled across the country and helpful in deepening rural local democracy. It is a participatory way of solving local issues without losing peace and harmony between families and society at large. However, the challenges these institutions face that are enumerated in this article need to be looked into by the state government so that the system of GKs resolving disputes becomes an example for the rest of the country.

### REFERENCE

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