

# **Proposal for a Study of the Institution of Gram Kachahari in Bihar**

**Submitted by: SIGMA FOUNDATION**

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## **Background:**

1. Judiciary is an important pillar of a democracy. The Indian Judicial System is one of the oldest legal systems and is believed to be very powerful. However, one big challenge the judiciary is facing is huge delay in delivering justice. Reportedly, 2.84 crore cases are pending in the subordinate courts and the number of cases is increasing day by day<sup>1</sup>. The other aspect is the problem of access faced by the people, particularly those who are marginalized and live in remote rural areas. Both the police station and the courts are far away from such people. They also face multiple systemic and many social barriers in accessing the system. Lack of money and awareness about functioning of the system makes it difficult for them to access the legal services and delay in disposal of cases reduces confidence of the people in moving the court for redressing any injustice faced by them.
2. The elected government functions as the executive arm of a democracy, which implements laws and delivers services for socio-economic development. The executive function has been devolved up to the local governments and its lowest tier i.e., the Gram Panchayat, functions at the village level. The 73<sup>rd</sup> Amendment of the Constitution of India recognized the local governments as the third stratum of government. Devolution of various functions on the Gram Panchayat has improved access to services to the rural people. It has taken deep roots in the country and has become an important institution for delivering government services. However, there has been no such move for bringing judicial services closer the people. Some State Panchayat Acts have provisions for the establishment of Naya Panchayats, i.e., elected judiciary, but those have not been made operational or the system is nonfunctional in general. For example, in the case of UP, Nyaya Panchayat has been nonfunctional from 1972 and these institutions were subsequently deleted from the State Panchayat Act. The only exception is Bihar where the elected judiciary, known as Gram Kachahari, has been functioning for a long time at the Gram Panchayat level.

## **Gram Kachahari – the elected grass-root judiciary of Bihar**

3. The Bihar Panchayat Raj Act 1947 provided for the establishment of Gram Kachahari to try petty cases. Elections to the Gram Kachaharis took place, along with elections for the Gram Panchayats in 1952 and subsequently in 1955, 1962, 1965, 1972, and 1978<sup>2</sup>. Such election was to be held every three years as per the said Act. After 1978, no elections could be held for more than two decades till 2001 due to various litigations in courts. The said Act was replaced by the Bihar Panchayat Raj Act, 1993, in the event of the 73<sup>rd</sup> amendment

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<sup>1</sup> Patidar, 2018: Biggest Challenge Faced by India Judiciary. <https://blog.ipleaders.in/biggest-challenge-faced-indian-judiciary/>

<sup>2</sup> Mahi Pal, 2019: Gram Kachahari in Rural Bihar Deepening Decentralised Democracy? Economic and Political Weekly, November 30, 2019.

of the Constitution. Section 90 of the Bihar Panchayat Act, 1993 provided for “Constitution of Gram Kachahari and election of Sarpanch and Panches” as under:

- (1) There shall be a Gram Kachahari in every Gram Panchayat area for the purposes of discharging the judicial functions imposed upon it by or under this Act and the Gram Kachahari shall consist of-
  - (a) A Sarpanch of the Gram Kachahari elected under the provisions of this Act, and
  - (b) Such number of directly elected Panches as may be notified from time to time by the District Magistrate. Its territorial constituency will be the same as those of the members of the Gram Panchayat.

Eventually the Bihar Panchayat Raj Act 2006 replaced the earlier Act of 1993 and Section 92 of the said Act provides for the establishment of Gram Kachahari in a similar manner. At present Gram Kachaharis have been constituted in all the 8,406 Gram Panchayats of the State and those are functional.

4. The Gram Kachahari is headed by the Sarpanch, who is directly elected by the people. They also elect one Panch from each of the Gram Panchayat constituency and the elected Panches elect the Upa Sarpanch. There are proportionate reservations of Panches and Sarpanches for Scheduled Castes and Scheduled Tribes and up to 20% such seats are reserved for Other Backward Castes (OBCs). Further, 50% of all seats are reserved for women. This allows fair representation of people from all social groups and ensures at least 50% representation for women in the Gram Kachahari, which makes the system more sensitive to the social issues as well as provides confidence to the people from the marginalized communities and the women to approach the Gram Kachahari for justice in respect of offences which come under their jurisdiction. There is one Nyaya Mitra, who has to have a law degree to assist the Gram Kachahari in various legal matters. The parties are allowed to present themselves or through family, friends or other persons before the bench of the Gram Kachahari. Each of the rival parties can nominate one of the Panches to represent their case but no lawyer is allowed to plead before the bench unless both the parties agree. The Gram Kachahari does not have the authority to issue warrants. For ensuring speedy justice, the cases are to be disposed within six weeks. The basic objective of the Gram Kachahari is to have amicable settlements of all disputes.

### **Powers of the Gram Kachaharis**

5. Gram Kachahari has been empowered to try both criminal and civil cases.
  - i. **Criminal Jurisdiction:** In respect of criminal jurisdiction, it can try in cases of offences punishable under certain sections of the Indian Penal Code, as provided under the Panchayat Act of 2006 and some other Acts. Gram Kachahari has to constitute a bench consisting of the Sarpanch and four Panches to try any case and to take evidence, which is to be recorded and judgement has to be passed based on the evidence. It has no power of imprisonment but it can impose fine up to one thousand rupees. In case of failure of the bench to come to a unanimous decision, the decision of the majority of the members 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. The Sarpanch may, in the case of breach of peace or apprehension of disturbance of public tranquility, direct any person to

abstain from 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 Sub-divisional Magistrate.

- ii. **Civil Jurisdiction:** The Gram Kachahari under its civil jurisdiction is related to the matter of property less than ten thousand rupees, recovery of rent, damage to movable property, animal trespass and partition.

### Functioning of the Gram Kachaharis

6. There is little secondary data on the functioning of the Gram Kachaharis. Members of SIGMA Foundation has been working for strengthening Panchayats in Bihar during the last couple of years with the support of UNICEF, Bihar State Office. In the course of its work, a few Gram Kachaharis were visited and it was found that some of the Gram Kachaharis were functioning well whereas the functioning was not so good in other cases. The focus of the study by SIGMA Foundation was the Gram Panchayat and not the Gram Kachahari and, therefore, there was no scope for systematic study of functioning of the latter. However, it was felt that such studies would be of much importance. Mr Mahi Pal in its paper on functioning of Gram Kachaharis of Bihar observed that these institutions “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”<sup>3</sup>. The paper also mentioned of a few case studies to reflect functioning of the Gram Kachaharis. In one Gram Kachahari 37 cases relating to land, houses, and theft were solved in a year. In another Gram Kachahari 72 cases, mostly related to land, were registered in a year and 30 of those cases were resolved and the rest were under hearing. In a few other Gram Kachaharis the functioning was poor due to non-availability of its office and lack of support. Lack of cooperation from police was also mentioned in a few cases. The Sarpanch of one Gram Kachahari in Dumra block of Sitamrhi district mentioned that they were trying their best to give justice but police station was a major stumbling block. There were also problems of ignorance and lack of trust of the people, who preferred to go to the police, as observed in that paper. It may be mentioned that police station should not take cognizance of cases involving offences which fall under the jurisdiction of the Gram Kachahari, However, that was not always the case, as reported to officials of SIGMA Foundation during their studies on Gram Panchayat. There was also lack of proper supervision and monitoring. Even the Panchayati Raj Department hardly had any data on performances of the Gram Kachaharis. There is, however, anecdotal reports that some of the Gram Kachaharis were functioning very well. For example, the woman Sarpanch of Wari Panchayat in Dobhi police station area of Gaya district settled a 20-year-old land dispute in a matter of six days<sup>4</sup>.

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<sup>3</sup> Ibid to 2

<sup>4</sup> Hindusthan Times 16<sup>th</sup> June 2017

## **Rationale for assessment of functioning of the Gram Kachaharis in Bihar**

7. It is very important to understand the functioning of the Gram Kachaharis of Bihar as the elected judicial body at the grass root level. This system has the potential to improve delivery of justice for the rural people and particularly the rural poor and members of the marginalized communities including women. The delivery of justice at the grass root level through Gram Kachahari hardly involves any cost and provides easier access to judicial services. Because of reservations to the post of the Sarpanch and the Panches and majority of them being women, the Gram Kachahari is expected to provide better confidence to the marginalized section and the women to seek justice as compared to that from the formal courts. This is particularly important since there is inequity in the system of delivering justice in India because the cost of accessing justice from court is not affordable to the poorer section. Further, those living in rural areas face problem of travelling to the distant town where judicial institutions are located and go through the complex processes in which engagement of a lawyer is essential. It is quite difficult for those who are not so literate or not familiar with the judicial processes to understand the nuances of the system and seek justice even if they can mobilize the required money and engage a lawyer. Also, the delivery of justice is enormously delayed in many cases. The problem is more for rural women who can hardly seek justice of their own from the formal judiciary without the aid of others. It is, therefore, very important to have a grass root level judiciary. In this context, it is necessary to know how the system of Gram Kachahari of Bihar has been functioning, particularly how the people are accessing the system and their level of satisfaction.
8. There have been many studies on the functioning of Panchayats in India, particularly after the 73<sup>rd</sup> amendment of the Constitution. But there has been hardly any research on the functioning of the elected grass-root judiciary such as the Gram Kachahari. On interaction with senior officials of the Panchayati Raj Department of the Government of Bihar by officials of SIGMA Foundation, it was found that even the state government does not have adequate information on how those institutions are functioning. Also, the system of supervision was rather poor. Therefore, there is little knowledge on functioning of the Gram Kachaharis at present which makes it necessary to conduct empirical research on how these institutions are functioning, what are the barriers and bottlenecks being faced by those institutions in delivering justice. It is also necessary to know why there are differential performances of Gram Kachaharis at different Panchayats although they operate under the same legal and administrative framework, as could be concluded from the case studies mentioned before, and what needs to be done to further strengthen these institutions. SIGMA Foundation is proposing to take up a study of the Gram Kachaharis of Bihar so that there is better understanding of their functioning.

## **Objectives**

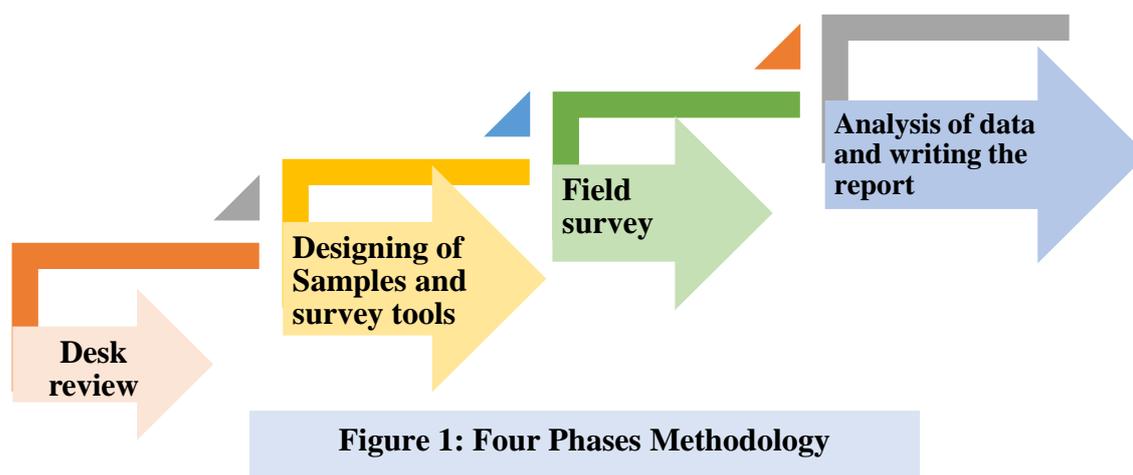
9. The proposed study will have the following objectives: -
  - (i) To assess the performance of the Gram Kachaharis in terms of numbers and types of cases being received, disposal of those cases, documentation of the evidences and other procedural aspects in delivering justice, time taken to dispose the cases, cost of delivering and receiving justice etc.

- (ii) To assess the human resources and other supports received by the Gram Kachaharis in discharging their responsibilities and to identify their capacity building needs.
- (iii) To understand the system of monitoring and supervision of functioning of the Gram Kachaharis.
- (iv) To understand the level of satisfaction of the citizens in resolving their disputes by the Gram Kachaharis and the problems faced by them, if any, to access such services.
- (v) To understand how the functioning of the Gram Kachaharis can be improved.

The findings will help the government of Bihar to improve upon the existing system and may also encourage other state governments to put in place appropriate system of Naya Panchayats.

## Methodology

10. This is proposed to be a dip-stick study for which a mixture of quantitative and qualitative methods will be used. This study will be divided into four phases (as shown in Figure 1), based on the objectives mentioned before.



- i. **The first phase** will be a desk review of the provisions related to the Gram Kachahari under the Bihar Panchayat Raj Act, 2006. That will help to understand the intended functions of the Gram Kachaharis and the procedure for delivering justice. Other related government orders and available documents will also be studied to delineate the issues on which evidences are to be collected from the field. The desk review will help designing the study tools.
- ii. **The second phase** will comprise of the process of sample selection and designing the tools for collection of data on the functioning of the Kachaharis and related issues. Selection of samples will be done as described later. Data will be collected from selected Gram Kachaharis using a questionnaire, which will be designed and field-tested before finalization. Views of all the important stakeholders will be taken through **Focus Group Discussions (FGD)** and **Key Informant Interviews (KIIs)** to understand the various aspects of the functioning of the Gram Kachaharis. There will also be a few **Case Studies** for which some of the cases of disposal by the Gram Kachaharis will be studied to get a better understanding of the processes the people had to go through in getting justice and how the same was delivered by the Gram Kachahari.

- iii. **The third phase** will be the actual field survey and concurrent checking of the quality of the captured data. Quantitative data on functioning of the Gram Kachaharis will be collected using a questionnaire under direct supervision of the members of the study team. For the qualitative aspects of their functioning, the FGDs and the KIIs will be conducted by members of the study team. The quantitative data will be analysed using standard statistical tools and the qualitative data, which are the transcripts of the FGDs and the KIIs, will be analysed using NVivo software. There will be special drives to ensure quality of the data. Also, all ethical aspects of the survey will be followed and verbal consent of the persons to be interviewed will be taken and there will be data masking to ensure anonymity.
- iv. **The fourth phase** will be the analysis of data, having brainstorming within the team to delineate the key findings and writing the report to best capture the status of functioning of the Gram Kachahari.

### Sample Design

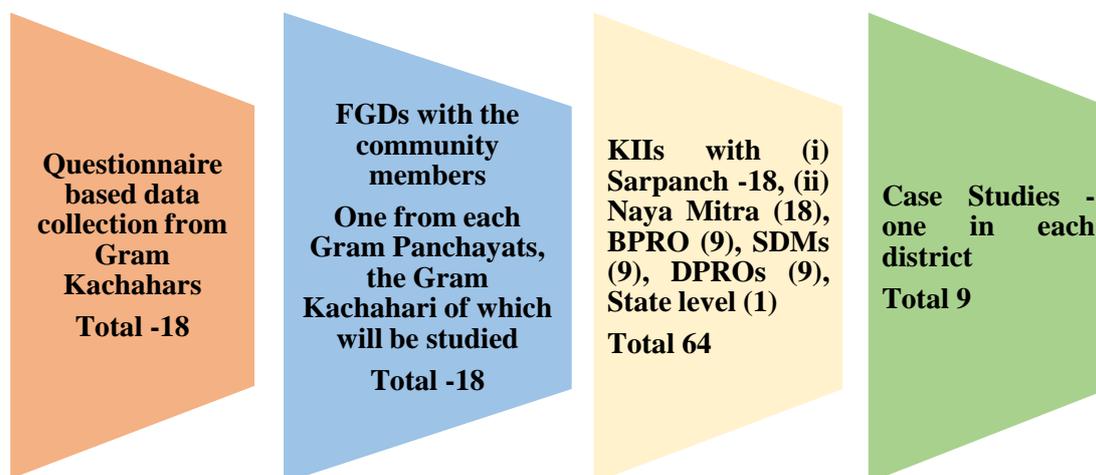
- 11. Bihar has 9 Divisions, 38 districts and 534 blocks. The Gram Kachaharis will be selected from all the divisions through a three-stage random sampling.

**First Stage:** Out of 9 divisions one district from each division will be selected at random. So, there will be 9 selected districts. This is to be done to achieve geographical spread of the Gram Kachaharis to be studied across the entire state.

**Second Stage:** 1 block will be chosen purposively from each of the 9 selected districts. Information will be first collected from the District Panchayati Raj Officer (DPRO) as to if there is any well-performing Gram Kachahari in any block and one such block will be selected. If no such information is available, one block will be selected at random. Therefore 9 blocks will be covered under the survey.

**Third Stage:** Two Gram Kachaharis of every selected block will be identified at this phase. One will be a Gram Kachahari known to be functioning well and the other one will be selected following the process of random sampling out of all the other GPs of the block. Thus 18 Gram Kachaharis from 9 blocks will be selected for the study.

- 12. The methods to be used for data collection is illustrated in Figure 2



**Figure 2: Scheme for data collection**

As Figure 2 shows, there will be:-

- (a) Surveys using field-tested questionnaire in 18 Gram Kachaharis to collect quantitative data on performances of the Gram Kachaharis,
- (b) FGD with the villagers, with representation from women SHGs/those who have moved the Gram Kachahari to receive justice to assess their level of awareness, how to access the Gram Kachahari and the experiences and difficulties faced by the people in the process,
- (c) KII with key officials of Gram Kachaharis(Sarpanch or the Naya Mitra),
- (d) KIIs with the Block Panchayati Raj Officer (BPRO) and the DPRO,
- (e) One KII with the Secretary/Director of the Panchayati Raj Department, and
- (f) One case study on experiences of receiving justice from the Gram Kachaharis from each of the 9 districts, i.e., total 9 case studies.

## Survey Plan

13. The survey will be done by the Researchers of SIGMA Foundation. Collection of quantitative data from the Gram Kachaharis will be assisted by two Field Investigators so that when one Gram Kachahari is visited there can be simultaneous collection of data as well as FGD and KIIs as proposed. The Field Investigators will be provided two days training by the study team for explaining them the methodology as well as orienting them on the objectives of the research and the basic legal framework of the Gram Kachahari. Data will be collected using Computer-Assisted Personal Interviewing (CAPI), which will be developed by SIGMA Foundation. That will help fast retrieval of the data and keeping a watch on the quality of data being collected.

## Capability of SIGMA Foundation and the study team

14. SIGMA Foundation is a 'Not for Profit' organization founded in the year 2014 by Dr M.N.Roy who retired from the IAS as Additional Chief Secretary of the Government of West Bengal. It has since taken up several studies on Panchayats and other aspects of socio-economic development across 11 States of the country including Bihar. SIGMA Foundation has been working as a partner of UNICEF for strengthening Panchayats of that State. Dr Roy and his team also developed a Road Map for the Panchayats of Bihar. Some of the Panchayat related works taken up by SIGMA Foundation are briefly mentioned below:

- i. **Strengthening Panchayats of Bihar:** This was implemented from November 2018 to March 2019, as a partner of UNICEF. The status of preparing plans by Gram Panchayats in Vaishali district, which was supported by UNICEF, was assessed and a strategy for improved Gram Panchayat level planning with due focus on the wellbeing of children and women was developed for being piloted in Gaya district. Institutional arrangement for more convergence of interventions for the development of children and women was recommended and the Govt. of Bihar adopted that as a policy by issuing an Order. The DPROs of selected districts of the State were oriented by SIGMA Foundation on the new approach through a week-long training programme.
- ii. **Strengthening Panchayats of Bihar (Phase II) – Building Institutional, Systemic and Technical Capacities during the period April 2019 to April 2020:** This was implemented

as a partner of UNICEF and a road map for building capacity of the Panchayats was prepared. Several Manuals on Accounting, GP administration etc. were also developed and a team of Master Trainers were trained by SIGMA Foundation.

- iii. **Study of Gram Panchayat Development Plan in Maharashtra:** This was done as a partner of UNICEF Maharashtra on request of the Government of Maharashtra (GoM). The study was conducted covering 264 GPs across all the divisions of the State. The findings of the study, submitted as a report, was used by the GoM in strengthening decentralized planning in that State.
- iv. **Decentralized District Plan for Rajasthan:** This is a World Bank assisted project for developing pilot decentralized district plan in Rajasthan, which has been implemented by Deloitte TT India LLP and SIGMA Foundation is a partner. The team is headed by Dr M.N.Roy of SIGMA Foundation.

### Team Members:

15. The key members of the study team are the following:

- (i) **Dr. M.N.Roy:** The team will be headed by Dr M.N.Roy. He was Secretary/ Principal Secretary of Panchayat & Rural Development Department of West Bengal for around 8 years, during which several reforms of the Panchayat system of the State were taken up. He was a member of many important committees of the Ministry of Panchayati Raj (MOPR) including the Committee on Leveraging Delivery of Services by the Panchayats, which was headed by Mr M.S.Aiyar, former Minister of MOPR. He did PhD from Tata Institute of Social Sciences and has many publications on various fields of development.
- (ii) **Dr. Sabari Bandyopadhaya:** She did PhD in Economics from Jadavpur University and has the experience of working at the field as well as policy level for the Panchayats of West Bengal for more than 15 years. She has also many publications in peer reviewed journals.
- (iii) **Mr Ganesh Chaudhary:** He completed LLB and joined the West Bengal Civil Service from which he retired as a Joint Secretary. He has served as an Executive Magistrate, as District Panchayat & Rural Development Officer in two districts and also served in various other capacities related to functioning of Panchayats in West Bengal for more than 20 years. He has sound knowledge on the legal framework of the functioning of Panchayats as well as the functioning of the judiciary.
- (iv) **Mr Debojyoti Majumdar:** He did M.Sc in Economic from Presidency University, Kolkata and has been working as M&E Officer in SIGMA Foundation. His expertise is designing research studies, data analysis, data quality checking and compiling research findings.

### Time Frame:

16. The study will be completed in 32 weeks and activity wise time that will be required is shown below.

Activity/No. of weeks	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32
Inception Report	■	■														
Designing & testing of tools	■	■	■													
Field Research				■	■	■	■	■	■							
Data Analysis and drafting the report								■	■	■	■	■				
Feedback on the reports													■	■		
Final Report															■	■

### Deliverables:

17. The following will be the deliverables for the study.

- Inception Report – At the end of 4 weeks.
- Questionnaire and other research tools – At the end of 6 weeks.
- The first draft of the Report – At the end of the 28<sup>th</sup> week.
- Final Report – At the end of the 32<sup>nd</sup> week.

**Budget:** Total budget for the study has been estimated to be **Rs 8,27,200** excluding the payable GST and **Rs 9,76,096 including GST**.