

Writers Series: Part II, Mr. George Pulikuthiyil on Governance

This is the second article in Mediators Beyond Borders' [six-part series](#) answering, "What would your company/industry/field, and region, look like if adversarial decision-making systems were replaced by collaborative ones?"



[Jananeethi](#), founded in 1991, is a secular collective of: members of civil society, human rights defenders, eminent jurists, retired judges, lawyers, academics, writers, thinkers, artists, social workers and activists who represent humanism, culture, creativity and knowledge. The mission of the organization is to defend life, dignity, liberty and other fundamental and democratic rights of all — using law and the legal system as therapeutic agents. It adopts a rights-based, victim-centered approach for healing through: legal, social, psychological, economic and emotional reparation.

To best understand the views shared here, let us define government as a body of persons, or structures, within which power is vested. In a federal system of government, hierarchies of

power centres interact with each other; a government need not necessarily share its powers with the people, and people are frequently reduced to being subjects. Meanwhile, governance delivers services to all at all times. Good governance means using best practices where everyone is unique, important, and politically and socially empowered and engaged. Individuals in this system have a pivotal role to perform, take pride in the community's achievements and shoulder the shared responsibility for failures. The values of good governance – accountability, transparency, rule of law and a collaborative or participatory and inclusive approach – are visibly manifested here leaving no room for speculation, parochialism, or disillusion.

The public and private sector are also responsible for promoting good governance to realize the values enshrined in the Constitution. This balances the interests of all concerned and focuses on common goals of reducing poverty and providing access to justice (and all other State services). This ensures that administrative structures/processes are: participative, accountable, transparent, equitable, efficient, solution-oriented and adhered to the rule of law.

Mahatma Gandhi, the Father of the nation, envisioned India as a *Grama Swaraj* (village of self-government); but India in fact developed a highly centralized form of government. The 73rd amendment of Indian Constitution, the *Panchayati Raj Act 1992*, changed this. It introduced new legislation on a collaborative system of governance with three levels – *Gram Panchayat* (village level), *Mandal Parishad / Block Panchayat* (block level) and *Zilla Parishad / District Panchayat* (district level). Decentralization allowed for the powers and functions of the government to trickle down to the local level (*gram panchayat*). The amendment has changed the balance of power significantly in rural India—transferring power to the hands of millions of people at all segments of society. Through over 600 *district panchayats*, around 6000 *block panchayats* and over 300,000 *gram panchayats* more than 3 million people are in formal positions—sharing political power and decision making in India's representative democracy. In the State of Kerala, more than half of the people at all levels of leadership are women.

Similarly, the justice administration of India has been democratized with the introduction of: *lok adalat*, legal aid clinics, alternative dispute resolution, *gram nyayalaya*, mediated/negotiated settlement of disputes, public interest litigation as well as peace & reconciliation and restorative justice initiatives. However, with 30 million cases pending in courts across the country, the Indian judiciary is struggling to clear a huge backlog. The bulk of the cases pending in subordinate courts involve poor litigants who bear the brunt of the snail-paced system.

The poor rarely appear in court, except as defendants in criminal prosecutions. This is not surprising when the function of the judiciary is conceived of as a supplier of services in a market driven by demand. The poor possess a limited capacity to express effective demand for any goods or services, and this is no different with justice. The costs of engaging a lawyer, opportunity cost of time spent in court, and the general level of skill and education required to litigate effectively, all serve as deterrents for the poor to seek justice.

Access to justice is also an important lever for gender equality. Women are more likely than men to be poor, worldwide, and they face extra obstacles in accessing justice mechanisms. Gender-based crimes and abuses are often not well legislated for or effectively implemented; and public stigma and prejudice play a part in silencing abused women and preventing them from seeking

justice. In short, the prevailing adversarial system of justice administration is not in favour of the poor, the disadvantaged and the marginalized sections of society.

For 26 years, Jananeethi, has worked on alternative and democratic systems of justice administration—to address exactly the problems identified above. On 9 November 1999, Legal Services Day was celebrated in Thrissur city. Council Members of the Local Self Governments met to discuss the role of *Gram Panchayats* in creating social amity. In the discussion, I articulated the significance of creating ‘litigation-free’ zones with people’s participation. A week later, the Chairperson of *Varavoor Gram Panchayat*, in Thrissur District, along with two of her Council members sought the help of Jananeethi in transforming their *Gram Panchayat* into litigation-free status.

A public meeting of all members of the Panchayat Council, local political party leaders, police officers, officers of civil administration and media was set to promote the idea of the project. At the meeting, Thichoor village was selected as the first-ever litigation-free zone. Two weeks later, another meeting was held with civil judges of the same jurisdiction, higher police officers and heads of civil administration to further elaborate on the idea of going to litigation-free. Jananeethi also secured the participation and support of the District judge in this project.

Law students conducted a social survey of Thichoor’s existing court cases, civil disputes, departmental cases, petty criminal cases, police complaints etc. The 520 households had 264 cases pending in civil and criminal courts as well as in government offices. The law officers of Jananeethi and its legal fraternity in the district examined the merits, demerits and possible legal remedies of each case. The students were given one week of training on strategic approaches and persuasive techniques; they then met parties to the disputes at their homes and counseled them on the need of resolving the disputes out of courts. This was a laborious task as it was difficult to change the mindsets of people with a litigant nature and get their consent to settle disputes amicably.

The few lawyers of Thichoor opposed going litigation-free, fearing their source of revenue was going to be stopped. They tried to defeat the project, but Jananeethi made the lawyers group leaders so that it was effectively impossible for them to publicly challenge the project. Later, they too accepted the proposal, having found its worth and significance in a democratic society.

Three Benches (courts), each consisting of a retired judge, a senior lawyer and a social worker examined each case. Three law students assisted each Bench. Starting 2 May 2000, lasting 3 days, the Benches heard disputes in detail and arrived at settlements. Only eleven cases could not be settled as concerned parties were absent, but those cases were left to the newly formed Harmony Committee to handle later.

The villagers were agog with excitement. On May 7, 2000 the whole village celebrated that they had just become India’s first litigation-free village! The Harmony Committee, comprised of five independent, erudite and senior members of the village, met once a week at a common place to hear complaints/disputes, if any, from the villagers. In the following year there were 84 such petitions that were smoothly resolved with the cooperation of all concerned. Gradually the number of petitions dropped and there was peace and social tranquility throughout the village.

This was a classic case of a paradigm shift from a structured administration of justice to an unstructured, democratic, inclusive and collaborative approach to justice delivery.

By Mr. George Pulikuthiyil, Executive Director, [Jananeethi](#), Thrissur, India, September 2017

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