

## A Critical Study on Panchayat Raj System in India

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### **Abstract**

Political decentralization generally means strong and vibrant means of local government. Decision-making being closer to the people, decentralization ensures decision-makers more effective accountability to the governed. Panchayat Raj, a synonym of democratic decentralization, was introduced in India in the late 1950s and early 1960s to restore to the erstwhile institution of Panchayat the pristine glory that it enjoyed in ancient India. It was introduced by 73rd Amendment to the Constitution and formally recognized the third tier of government at the sub-State level, thereby creating the legal conditions for local self-rule or Panchayat Raj. India has a cheered history starting from self-sufficient and self-governing village communities that survived the rise and fall of empires in the past to the modern institutions of governance with constitutional support. Though the basic structure of the PRIs or panchayat raj Institutions is identical across the states of India, it is described via different nomenclatures in different states. Every panchayat has its own characteristic features and their working also differs from one another.

### **Introduction**

When the panchayat raj is established, public opinion will do what violence can never do. —  
**Mahatma Gandhi**

The Constitution (73rd Amendment) Act, 1992 has added a new part IX consisting of 16 Articles and the Eleventh Schedule to the Constitution. The 73th Amendment envisages the Gram Sabha as the foundation of the Panchayat Raj System to perform functions and powers entrusted to it by the State Legislatures. The amendment provides for a three tier Panchayat Raj System at the village, intermediate and district levels. Article 243A provides that the Gram Sabha may exercise such power and perform such functions at the village level as the Legislature of a state may by law provide. The 73rd amendment thus envisages the Gram Sabha as the foundation of Panchayat Raj System. "Gram Sabha" means a body consisting of persons registered in the electoral rolls comprised within the area of Panchayat at the village level. In the Panchayat Raj System Gram Sabha is the only permanent unit. Duration of Panchayat i.e. Mukhiyas and other members of Panchayat continue for 5 years only from the date appointed for the first meeting, but the villagers do not change. Empowerment of Gram Sabha means strengthening of the Panchayat Raj Institution (PRIs). Success or failure of this system depends upon the strength of the Gram Sabha. The eleventh scheduled of the constitution created by the 73rd Amendment contains 29 subjects on which the Panchayats shall have administrative

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Control, Articles 243H empowers State Legislature to make by law provision for imposing taxes etc. by the panchayat. Obviously these panchayats before imposing any levy or tax in the village would be required to get clearance from the respective Gram Sabha.

### **Historical Back Ground**

The institution of Panchayati Raj is not new to India. It existed since the earliest times. We get ample references about the Panchayats in Manusmriti, Arthashastra and the Mahabharata. During the Muslim rule also talks the system continued to operate unobstructed. Arthashastra of Kautilya gives a comprehensive account of the system of village administration prevailing in his time. The village was the basic unit of administration in the Vedic period. The Vedic polity consisted of two popular assemblies namely the 'sabha' and the 'samiti.' The Samiti enjoyed the powers of electing the King, while the Sabha indulged in Judicial functions. During the period of Mughals, Akbar It was autonomous in its own sphere and exercised powers of local taxation, administrative control, justice and punishment.

The state system, after the advent of the British, emerged as a highly centralized set up the form adopted during the British rule was an admixture of the British and continental patterns. From 1870 Viceroy Lord Mayo's resolution gave the needed impetus to the development of local institutions. The real benchmarking of the government policy on decentralization can, however, be attributed to Lord Ripon who, in his famous resolution on local self-government on May 18, 1882, recognized the twin considerations of local government:

#### **(i) Administrative Efficiency and**

#### **(ii) Political Education.**

The Rippon Resolution, issued by Lord Rippon which focused on towns, provided for local bodies consisting of a large majority of elected non-official members and it was headed by a chairperson, who was also a non-official member. This resolution met with resistance from colonial administrators. The progress of local self-government was not that successful with only half-hearted steps taken in setting up municipal bodies. However, rural decentralization was not administratively reformed.

The Royal Commission on Decentralisation (1907) under the chairmanship of C.E.H. Hobhouse recognised the importance of panchayats at the village level. The commission recommended that to associate rural people also to be a part of administration it is necessary to constitute panchayats.

The Montague Chelmsford reforms brought a significant development of village Panchayats in a number of provinces. By 1925, eight provinces had passed panchayat acts and by 1926, six native states had also passed panchayat laws. D.P.Misra, the then Minister under Government of India Act 1935, remarked that the local self - Government bodies are inefficient. When the constitution was drafted, panchayat system was placed as the non-justifiable part of the constitution under Article 40 of the Directive Principles of State Policy.

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Although the idea of decentralized planning is as old as the Gandhian economic thought, attempts at giving a concrete shape to this thinking may be said to have been made in the post-independence period. In the Initial Years, Local bodies like panchayats, by and large, functioned as civic agencies of the state government and not as instruments of micro-level planning. It was during the third five-year plan, rural development strategies were evolved and attempts were made to constitute three-tier Panchayat system was made. But it was not successful except for few states. Many Committees were set up to establish the successful Panchayat system but no concrete steps were taken in this regard.

The Balwant Rai Mehta Committee was a committee appointed by the Government of India in January 1957 to examine the working of the Community Development Programme (1952) and the National Extension Service (1953) and to suggest measures for their better working. The committee suggested the following:

- An early establishment of elected local bodies and devolution to them of necessary resources, power and authority.
- Panchayats should have special powers to levy a special tax on land revenues and home taxes, etc,
- Its function should cover the development of agriculture in all the aspects, promotion of cottage and local industries, etc.,
- The body must be constituted for five years by means of indirect elections from the village panchayats.
- Governance in a way that was large enough for efficiency and economy of administration and small enough for sustaining a sense of involvement in Citizens.

With the coming of the Janata Party into power at the Centre in 1977, a serious view was taken of the weaknesses in the functioning of Panchayati Raj. It was decided to appoint a high-level committee under the chairmanship of Ashok Mehta to examine and suggest measures to strengthen PRIs. The Committee had to evolve an effective decentralised system of development for PRIs. They made the following recommendations:

- Reservation of seats for the weaker sections
- Two seats for women
- Adequate financial resources for the panchayats
- The requirement of Constitutional sanctions
- To extend people's participation in developmental activities.

The recommendations of these committees were not implemented due to the falloff Janata Government. During 1980's, two important Committees were appointed to look into local governments:

The committee suggested that the PRIs should be assigned the work of monitoring, planning and

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implementation of varied rural development programmes with a Block Development office. That the Panchayati Raj Institutions should be constitutionally recognized and protected. A new chapter in the constitution should be provided to define their powers and functions and free and fair election to be conducted through the election commission. It also recommended for the appointment of finance commission and all the rural development programmes are entrusted to the Panchayati Raj Institutions by amending schedule VII of the constitution.

#### **Constitutional Safe Guards:**

According to the Constitutional Assembly debate on 22 November 1948 that led to the insertion of the provision relating to Village panchayats in the Constitution:

The need for Panchayat System as follows: "A Definite and unequivocal direction should be given that the state shall take steps to organize panchayats and shall endow them with necessary powers and authority to enable them to function as units of self-government. The entire structure of self-government, of independence in his country, should be based on organized village community life".

That a very serious situation was created by not making the village republic or the village unit as the real basis of the Constitution. It must be acknowledged on all hands that this is a construction which is begun at the top and which is going down to the bottom.

That the amendment seeks to give only the political independence and not the economic independence. Also mentioned that the idea of Directive principles is to emphasise the way in which we want the country to function for which economic decentralization is necessary. This idea as quoted by Gandhi is that "Decentralisation both in the political and economic sphere is absolutely essential if India is to function as the democracy". Though the amendment included village panchayat to be decentralized as the economic unit as well as the political unit, Krishnaswami wanted to make it more explicit.

Dr Ambedkar was of the view that in the hierarchical society with highly skewed nature of assets and power distribution, vesting more powers at the village level would only perpetuate the exploitation of the disposed of,

Finally, Article 31A was included in the Draft Constitution. This Article was amended and renumbered as article 40(DPSP) in the revision stage of the Draft Constitution.

After 40 and above years in the view of the shortcomings which have been observed it is considered that there is an imperative need to enshrine in the constitution certain basic and essential features of the panchayat institutions and make the system of panchayat mandatory. Making the provision mandatory would make democracy much more efficient. Indira Gandhi has also accepted the need for the mandatory provision. Accordingly, it is proposed to add a new part relating to the panchayat. The bill was introduced on the 10th of September 1991 and passed as an Act in 1992 and came to be enforceable from 20th April 1993.

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**Basic Structure**

- These amendments added two new parts to the Constitution, namely, added Part IX titled “The Panchayats” (added by 73rd Amendment) and Part IXA titled “The Municipalities” (added by 74<sup>th</sup> Amendment).
- Basic units of democratic system-Gram Sabhas (villages) and Ward Committees (Municipalities) comprising all the adult members registered as voters.
- Three-tier system of panchayats at village, intermediate block/taluk/mandal and district levels except in States with population is below 20 lakhs (Article 243B).
- Seats at all levels to be filled by direct elections Article 243C (2).
- Seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) and the chairpersons of the Panchayats at all levels also shall be reserved for SCs and STs in proportion to their population.
- One-third of the total number of seats to be reserved for women.
- One third of the seats reserved for SCs and STs also reserved for women.
- One-third offices of chairpersons at all levels reserved for women (Article 243D).
- Uniform five year term and elections to constitute new bodies to be completed before the expiry of the term.
- In the event of dissolution, elections compulsorily within six months (Article 243E).
- Independent Election Commission in each State for superintendence, direction and control of the electoral rolls (Article 243K).
- Panchayats to prepare plans for economic development and social justice in respect of subjects as devolved by law to the various levels of Panchayats including the subjects as illustrated in Eleventh Schedule (Article 243G).
- 74th Amendment provides for a District Planning Committee to consolidate the plans prepared by Panchayats and Municipalities (Article 243ZD).
- Budgetary allocation from State Governments, share of revenue of certain taxes, collection and retention of the revenue it raises, Central Government programmes and grants, Union Finance Commission grants (Article 243H).
- Establish a Finance Commission in each State to determine the principles on the basis of which adequate financial resources would be ensured for panchayats and municipalities (Article 243I).
- The Eleventh Scheduled of the Constitution places as many as 29 functions within the purview of the Panchayati Raj bodies.
- Few states have not yet rested and delegated the powers to the panchayats to the true meaning and spirit of the 73rd constitutional amendment. Even if the functions have been delegated, the required powers to execute the said functions are not with the PRIs.

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- There is a general lack of manpower in the PRIs, particularly at the village level. With a limited number of officials, even after the complete devolution of powers, it may become difficult for the PRIs to look after all the works assigned to them by the State government. Unless the PRIs are equipped with adequate staff to discharge their functions
- As required by the panchayat act, the gram sabhas have not been efficient in ensuring and empowering the participation of people at the lower levels to the fullest sense possible.
- Powers given to the State Election Commissions also vary from State to State. No uniformity is ensured in this regard. Also, Recommendations of State Finance Commissions (SFCs) are generally not taken seriously.
- While women got political representation, the real power was usurped by their husbands, "The Sarpanch Pati" depriving them of any meaningful gains. Caste and gender-based discrimination are still prevalent and despite earning a political position, women are denied their due respect. Widespread illiteracy and ignorance further inhibit their capacity to perform.

The passage of the Constitution (73<sup>rd</sup> Amendment) Act, 1992 (or simply the Panchayati Raj Act) marks a new era in the federal democratic set up of the country. The then Prime Minister P.V. Narasimha Rao of Congress government introduced a fresh bill on Panchayat Raj in September 1991. It provided the much – needed constitutional sanction to the Panchayati Raj Institutions (PRIs) for functioning as an organic and integral part of the nation's democratic process. Panchayati Raj system does not apply to the Schedule V areas of the nine states, Schedule VI Areas of the North-East and the District of Darjeeling in West Bengal as well as J&K. Currently, the Panchayati Raj system functions in all states except Nagaland, Meghalaya, and Mizoram, and in all Union Territories except Delhi.

The provisions of the amendment include Articles 243, 243A to 243-O which were added as parts of newly inserted Part IX of the Constitution. It is the first formal democratic institution at the village level. The chairperson of this unit is called as Sarpanch.

The Amendment introduced across the board three-tier system of the PRIs at village Panchayat, Block and District levels.

Article 243D provides for reservation of seats at all levels for Scheduled Castes (SCs), Scheduled Tribes (STs) and women. While the reservation for the SCs/STs is as per their actual proportion in a population of the concerned area. Let's take, for example, the Scheduled Castes which constitute 30% of the total population and the Scheduled Tribes at 21%, then 30% and 21% seats shall be reserved for them respectively.

Since the Panchayat Raj Act do not automatically cover the scheduled areas, The Panchayat (Extension to Scheduled Areas) Act (PESA) was in acted on 24 December 1996 to enable Tribal Self Rule in these areas. The Act has also been extended the provisions of Panchayats to the tribal areas of nine states that have Fifth Schedule Areas. It should also be noted that most of the Northeastern states falling under Sixth Schedule Areas (where autonomous councils exist) are not covered by PESA, the reason being, they have their own Autonomous councils for governance. The nine states with

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Fifth Schedule areas are Orissa, Gujarat, Jharkhand, Maharashtra, Rajasthan, Andhra Pradesh, Madhya Pradesh, Himachal Pradesh, Chattisgarh. However, it is a clear indication that sincere implementation of PESA has not been seriously attempted by the state governments.

In Union of India v. Rakesh Kumar, It was held that Jharkhand Panchayat Raj Act 2001[sec 21(B),40(B),55(B)] providing 100% reservation in favour of scheduled tribes for chairman's position in panchayats located in the scheduled area in Jharkhand is constitutionally permissible. The SC, thus allows parliament to provide the 'modifications and exceptions' expressly in the application of part IX to scheduled areas.

Article 243 D of the Constitution of India mandates that at least one-third of the total number of seats filled by direct elections in the Panchayats shall be reserved for women. However, The Constitution (One Hundred and Tenth Amendment) Bill, 2009 was introduced in the Lok Sabha on November 26, 2009 by the then Minister of Panchayati Raj, Shri C.P. Joshi in order to amend Article 243 D of the Constitution of India. The bill is aiming at increasing the proportion of women to be the part of panchayats from one third to one half. It is noted that the states like Andhra Pradesh, Chhatisgarh, Jharkhand, Kerala, Maharashtra, Orissa, Rajasthan and Tripura have already a reservation for 50% of their posts for women.

A State may by law make provision for similar reservation of the offices of Chairpersons in the Panchayats at the village and other levels. These reservations favouring the Scheduled Castes and Scheduled Tribes shall cease to be operative at the period specified in Article 334. A State may by law also reserve seats or offices of Chairpersons in the Panchayat at any level in favour of backward classes of citizens.

Article 243 E is a provision on the duration of members in Panchayat. A clear term for 5 years has been provided for the Panchayats and elections must take place before the expiry of the terms. However, the Panchayat may be dissolved earlier on specific grounds in accordance with the state legislation. In that case, the elections must take place before the expiry of 6 months of the dissolution.

Article 243F makes provisions for disqualifications from the membership. As per this article, any person who is qualified to become an MLA is qualified to become a member of the Panchayat, but for Panchayat the minimum age prescribed is 21 years. Further, the disqualification criteria are to be decided by the state legislature by law.

- The state legislature can confer power upon panchayat systems (A.243G to 243H) and the 11th schedule enshrines the distribution of powers between the State legislature and the Panchayats.
- The State can authorize a Panchayat by Law to levy, collect and appropriate taxes, duties, etc
- To review the financial position and status of the Panchayat the state legislatures are authorized to appoint a Finance Commission.

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- The main source of income of the panchayat samiti is grants-in-aid and loans from the respective State Governments.

Referring to Article 329 of the Constitution, the courts cannot interfere in matters relating to allotment of seats, delimitation of Constituencies as under article 243K. Any matters relating to the election of panchayats can be questioned only by means of Election petition following certain procedures prescribed by the State legislature.

### **Advantage**

Each village has its own set of issues, which only the locals can understand. Members of a Panchayat are far more cognizant of the region-specific problems, and thus they are capable of taking a more informed decision in favour of the people of their village. Taking into consideration the specified needs of their inhabitants, the panchayats work accordingly. The panchayats undertake works of varied levels starting from creation of necessary establishments such as primary schools, to hygiene-related issues, to water requirements, to seek the central government's help towards generating jobs at the village level as well. They also have a major share of contribution towards mobilization of local resources, encouraging, large-scale community participation, planning at the lower levels, reduction of corruption as well as improvement in quality of nations working.

### **Comparative Study of Various States**

Some states have taken measures towards meeting the basic requirements of devolution as specified in the Constitution, other states have taken off to the next level in terms of promoting good governance, efficient service delivery, decentralized democracy, transparency, accountability and connectivity. Some of the recent initiatives as visible from the efforts of the state governments are presented below for the benefit of other states

The Karnataka government has enacted the Karnataka Sakala Services Act 2011, which guarantees delivery of essential civic services to the citizens of Karnataka, within the stipulated time limit. 11 services pertaining to gram panchayats are covered under Sakala, which includes maintenance of drinking water, street lights and village sanitation, issue of records such as cattle and crop census, BPL list, e-payment for work executed under developmental schemes, etc.

Measures have been taken by the Rajasthan Government, to strengthen the District Planning Committees and the Standing Committees at all three rungs of the panchayats.

Government of Maharashtra had launched the project called SANGRAM – Sanganakiya Grameen Maharashtra, a computerised programme for enabling rural Maharashtra to fight against corruption. This project is for effective implementation of development programmes, which is the convergent implementation of administrative reforms, on-line services, computerization, biometrics attendance, etc.

PanchParameswar Yojana, was launched to consolidate the funds made available to panchayats in the Panchayati Raj account through Integrated Action Plan for Rural Development. As per this initiative,

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the Gram Panchayats would get consolidated funds on the basis of the population during the financial year.

The Gram Sabha SashaktikaranKaryakrama (GSSK) campaign was launched, which is a drive for social mobilization and enhancing the institutional capacity of panchayats through administrative and technical support.

Through a notification, a time limit has been stipulated for the delivery of nine public services to citizens by gram panchayat and janpad panchayats. Responsibilities have also been fixed on certain public authorities for – (a) The delivery of each public service. (b) In the event of default and (c) Appellate authority. Every applicant who cannot obtain public services within the stipulated time shall be entitled to get the compensation.

### **Judicial Response**

Besides, substitution of the provision ‘more than half’ in place of ‘not less than two-thirds’ i.e. the no-confidence resolution to be carried on by simple majority instead of two-thirds majority and the reduction of ‘one year’ in place of two year for bringing no-confidence motion dilutes the principle of stability and continuity which are main purposes behind the object and reason of constitutional amendments in Part IX of the Constitution. The SC dismissed the appeal and held – a constitution is not to give all details of the provisions.

In Articles likes 243A, 243C(1), (5), 243D(4), 243X(6), 243F(1),(6), 243G, 243H, 243I(2),(4) the state Legislature has been empowered to make a law to implement the constitutional provision. Further in view of the “Constitution doctrine of Silence”, the petitioner’s arguments cannot be accepted.

A Constitution professing to be a democratic and republican in character cannot be interpreted to exclude the provision of the no-confidence motion in respect of the chairperson of the Panchayat just because of its silence on that aspect.

As a result of no-confidence motion, the chairperson of Panchayat, does not lose this position as a member of Panchayat and therefore there is no set back to the institution .the essence of democratic republicanism is that all person who comprise such bodies . Therefore, the statutory provision cannot be called either unreasonable or ultra vires of Part IX of the constitution .

Regarding the contention that the post of chairperson should have the same immunity as the president of India, the court held the argument of argument of desperation and advanced without any regard to the vast difference between the constitution status and position between the two posts ,which were not comparable at all by any standards even the president of India being subject to impeachment proceedings under Art. 61 of the constitution.

A three judges bench of the SC consisting of C.J.I. K.G. Balakrishnan, J .Sathasivam and J J.M.Panchal held that the proviso to section 4 (g) of provisions of the Panchayats (Extension to Scheduled area)Act, 1996 containing exception to the norm of ‘Propositional representation”, and the exceptional treatment incorporated in Jharkhand Panchayat Raj Act 2001 [ sec 21(B),40(B),55(B) ]

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providing 100% reservation in favour of scheduled tribes for chairman's position in panchayats located in scheduled area in Jharkhand is constitutionally permissible since art 243M(4)(B).

Expressly empowers parliament to provide for 'exceptions and modifications' in the application of part IX to scheduled areas.

Is applicable only to reservations enabled by Art 16(4). Therefore, the aggregate reservation amounting to 80% in scheduled areas is not unconstitutional on the ground of unreasonable restriction on the rights of political participation of persons belonging to the general category. The exercise of electoral franchise is an essential component of a liberal democracy. Such right do not have the status of fundamental rights and are instead legal rights which are controlled through legislative means. There is no inherent right to contest an election since there are explicit legislative control over it.

### **Conclusion**

Panchayat systems in all the states aim at effective decentralization and self-rule. But the means they adopt to achieve the same vary from states to states as mentioned above.

There is a conventional classification of fiscal, political and administrative decentralization using which the three-volume study conducted by the World Bank on Indian Decentralization ranks India the first in terms of Political decentralization and last in terms of Administrative decentralization. Our Indian states and other Union territories are willing to accept the panchayat system and give them recognition to hold elections. They also respect their stipulations with regard to reservations for Scheduled Castes (SCs), Scheduled Tribes (STs) and women. However, they are not ready to give them sufficient administrative control without which efficient functioning is at stake.

Again, although most States have established SECs, whose primary responsibilities are to organise and oversee Panchayat elections, and to prepare the electoral rolls, many have been unwilling to relinquish powers of delimitation – i.e. the power to define electoral constituencies. There is a lack of proper demarcation and clarity of functions among the panchayats and the other levels of government, and the states also have the rights to either assign or if necessary, to withdraw functions given to the panchayats. This again shows the supremacy of state upon the so-called autonomous panchayat governance.

A detailed insight into article 40 and articles 43 to 243 shows that the makers of our constitution want the village panchayats to be responsible for its own affairs as well as to act as a solid foundation for political democracy of the country. For encouraging development in the rural parts of the country, it is necessary to mobilize the resources in the hands of people and thus accelerate the participation of them in the decision making process that has an effect on their daily living. The pragmatic philosophy of miniaturized participative democracy, where every man matters, is the cornerstone of developmental dynamics. The higher level policy makers are also well aware that the empowerment goals at Panchayat level have not been fully achieved but with some procedural, legislative and most importantly attitudinal changes, it is not far from being achieved.

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**If we would see our dream of Panchayat Raj, i.e., true democracy realized, we would regard the humblest and lowest Indian as being equally the ruler of India with the tallest in the land.**

**— Mahatma Gandhi**

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