
CONSTITUTIONAL AMENDMENTS AND THE EVOLUTION OF THE PANCHAYAT RAJ SYSTEM IN INDIA: A COMPARATIVE ANALYSIS

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ABSTRACT

The Panchayat Raj System was introduced in India, through 73rd Constitutional Amendment Act, 1992. This ensuring the democratic function at the grassroots democracy in democratic institutions. This amendment is certainly a step forward in the direction of decentralization of powers. This gives a constitutional status to Panchayats. Despite the fact that Panchayat Raj system has been invoked for centuries, the performs of the Panchayat Raj institutions remains dismal. April 24th day of 1993 is an important day in the history of the Panchayat Raj in India because on this day the constitution provides the constitutional status to the Panchayat Raj institutions. This Paper aims to explore the evolution of the Panchayat Raj system in India thorough the lens of constitutional amendment. By analyzing the constitutional framework and its impact on the grassroot democracy, this study seeks to contribute to the discourse on decentralized governance in India and provide insights for policy formulation and implementation. It was introduced to develop the rural environment. It increases the local autonomy and decreasing the control of the higher authority particularly state government. Panchayats are the backbone of the Indian villages from the beginning of our history.

Keywords: Panchayat Raj, Constitution, Constitutional Status, Grassroot, Decentralization.

INTRODUCTION:

In our constitution local self-government and Panchayat Raj remained a state subject and the central government could not pass any legislation unless the constitution is amended. Hence, the 73rd constitutional amendment act 1992, was introduced to strengthen the Panchayat Raj system by empowering the central government to bring in adequate legislative measures. The 73rd amendment to the constitution has a checkered history. It struggled for nearly three years to see the light of the day as an act. The Rajiv Gandhi government presented the Panchayat Raj Bill¹ in 1989, and was passed by Lok Sabha yet neglected to acquire the requisite greater part in the Rajya Sabha. The V.P. Singh government likewise attempted to push a bill in 1990, on the Panchayat Raj, it lapsed with the disintegration of the Lok Sabha. In 1991, the congress government again introduced the bill on Panchayat Raj with some modified provisions. The bill was first discussed by the joint parliamentary committee and then by parliament. It was passed by Lok Sabha on December 22, 1992 and by the Rajya Sabha on the following day. After rectification by 17 states, the president gave his assent to the bill on April 20, 1993 and it became an act. Through the gazette notification the act was carried into power with impact from April 24, 1993. The 73rd amendment act tends to provide meaningful Panchayat Raj bodies in the country.

OBJECTIVES OF THE STUDY

- To highlight the uniqueness and significance of the 73rd Constitutional Amendment Act, 1992.
- To analyse the relevant Constitutional Amendments and to examine the extent to which they have succeeded in achieving the goal of decentralisation of powers.
- To suggest measures and recommendations for the better functioning of the Panchayat Raj institutions.

REVIEW OF LITERATURE

The sources of law, pertaining to the field of Panchayat Raj System in the form of literature are sufficient. Most of these literatures which I referred are deal with socio, economic and political

¹ 64th Constitutional Amendment Bill, 1989

aspects of the Panchayat Raj System. The one's which deal with legal aspects of Panchayat Raj is very minimal.

Panchayat Raj Institutions authored by S. Baluchamy (2004) is an in depth study of the awareness among the Panchayat Raj functionaries and the adequacy of power and the resources.

G. Palanithurai's New Panchayat Raj System at work – An evaluation, (1999) is an excellent book on the working of the Panchayat Raj System in Tamil Nadu along with case analysis of Athoor, a Block Panchayat and a case analysis of District Panchayat of Dindigul.

The book written by R.P. Joshi and G.S. Narwani on Panchayat Raj in India, Emerging Trends across the states (2002) is a wonderful book on the subject and deals with all aspects of Panchayat Raj system.

The book authored by S.N. Mishra and Sweta Mishra on the topic Decentralised Governance (Macro and Micro perspective) (2002) is a detailed study related to decentralized planning and rural development. It deals with the concept of good governance and people's participation for good governance.

S.L. Goel and Shalini Rajneesh authored Panchayat Raj in India – Theory and Practice (2009), is an important literature in the field of Panchayat Raj studies and it deals extensively about the three tiers of the Panchayat and about their functioning. It highlights the importance of people's participation as a key to success. It emphasizes on training of the elected personnel.

METHODOLOGY

The study is a doctrinal research based on both primary and secondary sources employing the historical method, comparative method and analytical method. The primary sources are the statutes including the Constitution of India, Constituent Assembly debates, Government of India Acts, various state level Panchayat Raj Legislations and Case Laws. The secondary sources are the text books, reports, commentaries, journals and the like. Modern sources like websites are also referred to.

PROVISIONS BEFORE INDEPENDENCE

There were two important provisions before Indian independence and they are the Government

of India Act, 1935 and the Indian Independence Act, 1947.

THE GOVERNMENT OF INDIA ACT, 1935

The British government wished to formulate a new Act for India and a joint select committee was constituted and the president of the committee was lord Linlithgow. This Act consists of three lists and list II, provided provincial legislative list, entry number 12 dealt with the subject matter of local self-government and other related matters. The provinces were given autonomy with respect to subjects delegated to them and they were given power to legislate on those subjects in list II. The local administration fell within the ambit of the provinces and they had the power to pass legislation related to local self-government. Therefore, it was left to the provinces to decide on the local self-governments and matters connected with them. Both the Indian National Congress and the Muslim League went against the Act, however took part in the provincial elections².

THE INDIAN INDEPENDENCE ACT, 1947

The plan of Lord Mountbatten to divide India into two independent dominions was accepted by the congress and Muslim League and to give effect to the plan, the British parliament enacted the Indian Independence Act, 1947. This Act, mainly dealt with the two new dominions that were to emerge from the Indian Union, i.e. Pakistan and India. The appointed date for partition was declared as August 15, 1947. As the framing of the new constitution would take time, the new dominions and the province were to be governed by the Government of India Act 1935 till the new constitution was framed.

THE PANCHAYAT RAJ AND THE CONSTITUENT ASSEMBLY

The resonance of base-super structure analogy is clear when a distinguished member of the constituent assembly referring to the functionally imperative character of village Panchayats, said; “if the paisa are dealt with, the rupees will deal with themselves”³. It is this basic thought that compelled our founding fathers to give definite and unequivocal directives to the state that it should take steps to organize village Panchayats and invest them with vital forces and position

² List II, Entry 12 of the Government of India Act, 1935 reads thus: Local Self-government, that is to say, the Constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

³ Constituent Assembly Debates, Vol. VII, November 22, 1948, at p.524, per V.I. Muniswamy Pillai.

to empower them to work as units of self-government⁴. The makers of the Indian constitution to make room for it by inserting a new draft Article 31A⁵; and then followed the full-fledged debate on this amendment in the Constituent Assembly on November 22, 1948 till Article 31A, (at present Article 40) became “part of the Constitution”⁶.

SUBSEQUENT AMENDMENT IN THE CONSTITUTION, THE 73RD CONSTITUTIONAL AMENDMENT ACT, 1992

The only provisions relating to Panchayat Raj before the 73rd constitutional Amendment Act is Article 40. It is the only sole provisions relating to Panchayat Raj in the Indian constitution until the year 1993. So, it took as more than forty-three years to include the provisions relating to Grass root level democracy which was envisaged by Gandhiji. The Government of India took various steps to study and include Panchayat Raj as an essential part of the Indian democracy it we had to wait for a long time for that to happen.

The Government of India had appointed the Balwant Rai Mehta⁷ committee to suggest changes in Panchayati Raj systems. It advocated with three tier system of gram panchayat at the village level, Panchayat Samiti at block level and Panchayat Parishad at the district level. To make Panchayat Raj effective some amendments were needed in the constitution of India⁸. In 1986 the committee under the noted constitution expert Dr LM Singhvi recommended a constitutional status for the panchayat raj Institutions. He suggested that a separate chapter should be added in the constitution of India.

In 1988 P.K. Thungan committee had recommended that the panchayat raj bodies should be constitutionally recognised on the basis of constitution 64th Amendment Bill drafted and introduced in the Parliament. The constitution 64th Amendment Bill was presented in the parliament in 1989 in order to make the Panchayati Raj Institutions powerful bodies but Rajiv Gandhi efforts failed due to the lack of a majority in Rajya Sabha and lost by two votes.

⁴ Article 40 of the Constitution of India

⁵ Moved by K. Santhannam, Constituent Assembly Debates, 1948, Vol. VII, p.520

⁶ Constituent Assembly Debates, Vol. VII, at p.527: The motion to add Article 31A (which correspond to Article 40 of the constitution of India) was adopted on November 22, 1948.

⁷ Government of India: Report of team for the study community projects and national extension service, New Delhi, 1957.

⁸ Malcome Adiseshiah, Panchayat Raj: Malady & Remedy

THE 64th CONSTITUTIONAL AMENDMENT BILL, 1989

The first concrete measures to give constitutional sanction to Panchayat Raj was taken up by the Rajiv Gandhi's government by introducing 64th constitutional amendment bill on local government on May 15, 1989. The same bill was passed by the Lok Sabha on August, 1989. Although the Lok Sabha passed the Bill, it failed to gain the requisite majority in the Rajya Sabha. The union government in 1990, tried to push a bill on Panchayat Raj, it lapsed without being taken up for consideration with the dissolution of the Lok Sabha.

THE 73rd CONSTITUTIONAL AMENDMENT ACT, 1992

In 1991, the next union government again introduced the Bill on Panchayat Raj with some modified provisions. The bill was alluded to a select committee by the parliament. The bill was first discussed by a joint parliamentary committee and then by the parliament. It was passed by the Lok Sabha on December 22, 1992 and by the Rajya Sabha on the next day. The Amendment inserted a new part IX of the Indian constitution containing Articles, Articles 243 to Articles 243O and a new schedule the eleventh schedule. The constitutional amendment act has given a practical shape to article 40 of the Indian constitution included in the directive principles of the state policy, casting a heavy duty on the middle just as the states to set up and support town Panchayats, to make them compelling organizations of self-government.

SALIENT FEATURES OF 73rd AMENDMENT ACT

THE GRAM SABHA⁹

There will be a Gram Sabha in every village practicing such powers and functions as per the concern legislation provisions.

CONSTITUTION OF PANCHAYATS¹⁰

Panchayat will be comprised in each state at the village. Intermediate and district levels. However, the states with the population not exceeding 20 lakhs have been given the option not to have any intermediate level panchayat.

⁹ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 A

¹⁰ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 B

COMPOSITION OF PANCHAYATS¹¹

While the election in respect of all the members to panchayats at all levels will be direct, the elections in respect of the post of the chairman at the Intermediate and district level will be indirect. The method of elections of chairman to the village level has been left to the state governments to choose.

RESERVATION OF SEATS¹²

Seats are reserved for schedule cats and schedule tribes at all levels according to their population at each level. The one-third of seats are reserved for ladies and these might be allotted by rotation. Similar reservations have been made in respect of the office of Chairperson also.

DURATION OF PANCHAYATS¹³

A uniform five year term has been allowed to the panchayats. In case of dissolution or being superseded, elections should be held within six months of the date of dissolution.

THE POWERS, AUTHORITY AND RESPONSIBILITIES OF PANCHAYATS¹⁴

The state legislatures have the legislative power to confer on the Panchayats such powers and authority as may be necessary to enable them to function as institutions of self-governance. They may be interested with the responsibility of;

1. Preparing plans for social justice and economic development.
2. Implementations of Schemes for social justice and economic development.
3. In regard to matters listed in the Schedule XI. The List contains 29 items.

¹¹ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 C

¹² Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 D

¹³ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 E

¹⁴ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 G

POWERS TO IMPOSE TAXES AND FUNDS OF THE PANCHAYATS¹⁵

The state legislatures have been enable to approve the panchayats to impose, gather and appropriate suitable local taxes and also provide for making grants in aid to the panchayats from the Consolidated Fund of the concerned State.

STATE FINANCE COMMISSION¹⁶

A finance Commission has to be established for each state once in every five years to review the financial position of the panchayats and to make appropriate suggestions to the state on the appropriation of funds between the state and local bodies.

STATE ELECTION COMMISSION¹⁷

A State Election Commission shall be constituted in each state to ensure free and fair elections to the panchayat.

CONTINUANCE OF EXISTING LAWS AND PANCHAYATS¹⁸

The state legislatures have been mandated to bring in necessary amendments to their Panchayats Act within a maximum period of one year from the commencement of this amendment Act, so as to conform to the provision contained in the Constitution. The 73rd Amendment to the constitution of India not only confers a constitutional status to the Panchayat but also provides uniformity and formal structure to these traditional institutions of self-governance for the sake of their effective working. The past attempts at institutionalizing the Panchayats were half-hearted and failed due to the absence of supportive constitutional measures and absence of political will¹⁹. The 73rd Amendment initiates a fundamental restructuring of governance and administrative system of the country based on the philosophy of decentralization and power to the people²⁰.

¹⁵ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 H

¹⁶ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 I

¹⁷ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 K

¹⁸ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 N

¹⁹ Amitabh Behar and Yogesh Kumar, Decentralisation in Madhya Pradesh, India: From Panchayat Raj to Gram Swaraj (1995 to 2001) Working paper 170, ODI, London, U.K

²⁰ B.R. Purohit and Yatindra Singh Sisodia, Evolution of Panchayat Raj in India, Rawat Publications, New Delhi, 2005

THE DISTRICT PLANNING COMMITTEE²¹

Along with the constitution. 73rd Amendment. Act for the panchayat, the Constitution 74th Amendment Act was also passed for the municipalities in 1992. There was one common provision in Article 243 ZD for the Constitution of the District Planning Committees. It provided that in every state, district Planning Committee shall be constituted at the district level, which will consolidate the plans prepared by the panchayat and the municipal bodies in the district. It will be a draft development plan for the whole district. The state legislatures should make the necessary provisions in the law for the Constitution of the District Planning Committee. The panchayat Raj institutions through the 73rd Constitutional Amendment Act, have been conferred the constitutional status in large public interest. The 73rd Constitutional Amendment Act, 1992 has therefore been cherished as a watershed event for achieving rural development through Democratic decentralization²². It has laid down certain mandatory provisions in terms of structural organization of Panchayat Raj Institutions while the functional aspects are left to the option of respective states.

THE MANDATORY PROVISIONS UNDER THE 73rd AMENDMENT ACT:

The following provisions are the mandatory provisions under the 73rd Amendment Act:

- Reservation for weaker section. To provide reservation of seats for scheduled castes, scheduled tribes in proportion to their population. And for women, it is not less than one third of total seats.
- The elections of all the members to Panchayats at all levels will be direct.
- The term of the Panchayats at all level is a fixed period of five years and therefore to hold Panchayat elections regularly every five years.
- To appoint state finance commission to make recommendations regarding financial powers of Panchayats.
- To appoint state election commission to conduct elections for the Panchayats at the

²¹ Constitution (73rd Amendment) Act, 1992: Government of India, Article 243 ZD

²² S.L. Goel and Shalini Rajneesh, op. cit., p.48

various levels

- To constitute District planning commission to prepare draft development plan for the district as a whole.

THE OPTIONAL PROVISIONS OF THE 73rd AMENDMENT ACT:

The following provisions are the optional provisions under the 73rd Amendment Act:

- Direct election of Village Panchayat chairperson
- Role and scope of Gram Sabha
- Powers and functions of each tier
- Financial devolution
- Maintenance and Audit of accounts
- Composition and function of District Planning Committee
- Reservation to chairperson's post at Village Panchayat, Intermediate Panchayat level and District Panchayat level by rotation

CONCLUSION:

The panchayat Raj institutions in India have neither been a great success nor a complete failure. Every system has its own benefits and faults. The Panchayat Raj Institutions come to say and the lacunae have to be first dictated and then detached. The 73rd Constitution Amendment Act bearing the basic tenet of Rajiv Gandhi's Proposition, "empowering people for prosperity" brings out significant changes in the attitude, behaviour and performance of the rustic folk in India. All the subject stated under the Eleventh schedule and the some of the states have devolved a few matters stated under it and some of the states have devolved none of the subjects. There is no clear demarcation of functions between the three tiers of the panchayat. Most of the time there is duplication of work and overlapping of functions among the three tiers of the Panchayat. The Gram Sabha which is the cornerstone of the Panchayat Raj Institution is neither conferred with any power nor duties and hence strengthening of the Gram Sabha becomes essential. The

real objectives behind the 73rd Constitution Amendment Act is to bestow upon the panchayats the self-rule, that is, the Gram Swaraj.

SUGGESTIONS AND RECOMMENDATIONS FINANCIAL REFORMS

Finance is the foremost need of any institution for its successful working. It is important to make Panchayat Raj Institutions financially sound and self-sufficient. Dependence of Panchayats on state governments for funds is not good for the health of the new Panchayat Raj System. The following suggestions are given to augment the finance of the Panchayats.

SHARING OF REVENUES

The finance commission at the central and state level should divide the revenue between the state and Panchayat Raj Institutions following certain formulae as it is done between the Centre and the state.

POWER TO GENERATE FUND

One of the significant weakness of Panchayat Raj System is lack of funds in the hands of the Panchayats. In order to overcome this financial problem the Panchayats at the intermediate level and district levels shall have the power to generate fund, borrow fund, improve assets and employ staff independent of state government. If the Panchayat is sound financially then only it can employ its own staff and other people.

MICRO LEVEL PLANNING

While preparing plans for rural development, emphasis should be laid on personal contact between the planners and the people for whom the plans are meant. It is extremely difficult for people sitting and deliberating in urban Centres to perceive, let alone understand, as to what is urgently needed in rural areas. The Panchayat Raj Institutions have to contribute towards strengthening the planning process at the micro level in overall rural development.

PANCHAYAT RAJ COMMISSION

It is recommended that the government of India may constitute a Panchayat Raj Commission to look into the performance of Panchayats across the country and recommended ways and means to ensure that the Panchayat Raj Institutions are truly recognized tiers of governance in

our federal polity.

PANCHAYAT RAJ TRIBUNAL

Introduction of Part IX in the Constitution had opened the Panchayat affairs to judicial review. This led not only to litigations by the Panchayats and for the Panchayats, but also against the Panchayats. So the states can constitute a separate tribunal for Panchayat related election disputes and other disputes. Hence, it is recommended that the respective state governments may constitute a Panchayat Raj Tribunal to hear and adjudicate matters connected with the Panchayats. This will enable the litigants to receive speedy remedy.

EMPOWERMENT OF THE WEAKER SECTION

The basic idea behind the reservation was to provide an opportunity for the marginalized classes to come forward and be part of the total development process. Only political recruitment of all the section of society will never attain the desired goal. The marginalized people should be empowered in all spheres of life.

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