

## **Centre State Relations in India**

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**Week 05: Legislative Relations: Interpretation of Lists, Pith and Substance, Territorial  
Nexus and Related Areas**

**Lecture 23: Legislative Relations of Union and Panchayats**

Greetings to all of you. We have been discussing different facets of legislative relation and in order to develop our understanding in a comprehensive way, we decided to also discuss how the Centre State relations have developed in the light of constitutional arrangement of the local self government. So, in today's discussion we will be talking about legislative relation of a State with local self government, what we also call it as third tier government. So, this is what we intend to cover in this session, we will be covering that how local self government has been dealt under the Indian Constitution, how do we look at the third tier government in the federal set up and what are the salient features of 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendments, which have given constitutional status to the third tier government. And then we will try to understand that to what extent the third tier government is contributing to cooperative federalism and how certain provisions with regard to third tier government is establishing asymmetrical federalist structure in India. And we will also look at what the recommendation has been given by NCRWC on the matter of third tier government particularly which deals with scheduled and non-scheduled areas.

When you look at the history and growth of third tier government in India, the literature indicates that it has got a very long history, there has been the presence of self government at the lowest level, at the grass root level, at the village level in ancient time, in medieval time or even during the time when India was a colony. 1882 is the year when colonial ruler attempted to institutionalize the system of third tier government when Lord Ripon thought of giving a better political structuring, better political outlook to the third tier government. Thus the Royal Commission on

Decentralization in 1909 came up with the recommendation that the local government be full of representative where people they decide on who shall be representing them and local government shall be manned by the elected people. 1919 Government of India Act which is based on Montagu Chelmsford Reform came up with the idea that this local governments they need to be brought under the control of the provincial government. So, the independent identity of the third tier government got compromised. It is suggested that identity should be somewhere diluted and thus let it be under the control of provincial government and that is also the scheme which continued in the Government of India Act 1935. Now when you look at the Constitution making and the presence of third tier government in the discussion on Constitution making, you would find that there has been an agreement to discard the role of third tier government in a broader governance framework. When I say there has been an agreement to discard, I am referring here particularly the view point of Pandit Nehru and Dr. Ambedkar. Both of them they disagreed with the idea of Gram Swaraj or giving independency to village or considering village as a republic which is primarily based on the idea of Gandhiji.

Gandhiji was of the view that every village should become a kind of independent one and the real democracy shall be there at that village level where people should elect their leader, their representative and they shall be responsible for governing village and that is how he suggested having a kind of pyramid like a structure. Both the leaders Pandit Nehru and Dr. Ambedkar discarded this idea and then said that both at the Central and the Provincial level there should be a directly elected government and in order to accommodate the ideology of Gandhiji they provided for a directive principle under Article 40 wherein it has been suggested that endeavor shall be made by this government to provide for local self government, to provide for third tier government. But looking into the diversity of this country, looking into the requirement of development in this country and prioritization on such developmental agenda, it has been suggested that the third tier government must be strengthened and thus in the year 1992, the 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendments were introduced for giving constitutional sanction to the third tier government at the in the rural areas known as Panchayats system and in the urban areas known as Municipality. So 73<sup>rd</sup> and 74<sup>th</sup> amendment act suggested for directly elected local self government with an idea to bring in more transparency and accountability in the governance structure and in pursuant to these

amendments parliament has made a law Panchayat Extension to Scheduled Areas to deal with those areas which are in a way backward and populated by tribal people.

So the idea of giving a constitutional status to the self government was to make representative governance impactful and to ensure that that arrangement is getting constitutionally protected. So third tier government largely get driven by the idea of good governance where following attributes are being attempted to address- participation of the people, they are directly electing the representatives at the panchayat level and at the municipality level, then rule of law, transparency, accountability. Thus it is suggested that the third tier government shall have everything which would make it an institution for good governance. So these are the constitutional provisions which have given a kind of constitutional status constitutional protection Part IX and Part IXA talks about Panchayat and Municipality respectively. We have scores of provisions dealing with panchayat system - Article 243 – Article 243O and for Municipality Article 243P – Article 243ZG. For the panchayat system under 73<sup>rd</sup> amendment act the three tier structure was suggested at the district level it should be a Zila Panchayat at the level mid-level it should be a Panchayat Samiti and at the village level it should be Gram Sabha. Now when you look at the legislative relation between the State and Panchayat 73<sup>rd</sup> amendment has provided for a structural background on the functioning of the Panchayat, the structural background, the mode of election and the hierarchy and the institutions.

It talks about the constitution of Panchayats, reservation of seats in panchayat where we find that much before Parliament passing an amendment for reserving seats for women it has been provided in the panchayat law that 50% of the seats shall be reserved for women. Then duration of Panchayat and it has been also said that State shall make a law in order to make it very clear that what is the responsibility and function of Panchayats. Then under 73<sup>rd</sup> amendment act and 74<sup>th</sup> amendment that what shall be the composition of Panchayat or Municipality respectively, the electoral process, how disqualification of members are to be counted in, what shall be the power and responsibilities of Panchayats and power to impose tax. It became a mandate under the 73<sup>rd</sup> amendment act that State shall make a law in order to give finer details on the powers and functions of Panchayat. So as I said there is a constitutional mandate to make a law we find that that states have made a law for example, Uttar Pradesh, Jharkhand, Bihar they have made a law. These laws in detail they decide on the regulation of Panchayat, how the Panchayat should function, what should be the

electoral process what should be the tenure, quorum of it power to levy taxes. As we have studied that asymmetrical federalism is also an integral part of the Indian Constitution where there has been a case of protecting the identity of the individuals, there has been a case of protecting the ethnic and culture ethnicity and culture of people living in that area. Therefore exception clause has been provided under the scheme where it says that that Part IX shall law shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244. Nothing in part 9 shall apply because of the very requirement of that reason that requirement connects with the protection of these people living in that area, preservation of culture of that reason and also to allow their identity to be conserved and that is why it says that Part IX does not apply to Nagaland, Meghalaya and Mizoram, the hill areas Manipur for which District Councils exists District of Darjeeling in West Bengal for which Darjeeling Gorkha Hill Council is been established..

So you can very well see that how this constitutional provision related to panchayat system has also accommodated the localized interest of certain reasons of this country. Article 243M(4) (b) further says that Parliament or State Legislature by law can extend the application of Part IX in Scheduled Area and Tribal Areas and there you see that 1996 they have made a law where Panchayat (Extension to the Scheduled Areas) Act wherein power has been excised under this clause. Now let us look at legislative relation and municipality. Municipality as I said is for urban areas. So there is a responsibility upon the State to make a law to give a legislative framework, legislative structuring for Municipal and such law shall deal with composition of Municipalities, Ward Committees, disqualification of members, powers and responsibilities of Municipality and power to impose tax.

So there you find that on the similar line like Panchayat, State Legislature has been empowered to make a law to deal with different facets of functioning of Municipality. So when you look at Municipality you find that is three layered structure Nagar Panchayat, Municipal Council and Municipal Corporation. That's the hierarchical structure which has been suggested in 74<sup>th</sup> constitutional amendment. Now these are the institutions which you find which is there for the urban areas. For example, State Election Commission is not only for urban areas it has got a responsibility to conduct election in both Panchayat and Municipality. Then you have a Municipalities, Ward Committees State Finance Commission in again a body which is responsible

for suggesting devolution of fund to the panchayat and municipalities and then you have a District Planning Committee and Metro Planning Committee based on the population of that area.

As I said that Part IXA categorically says that Part IXA shall not be applicable in the Scheduled Areas in Article 244(1), tribal areas which are referred under Article 244(2) or Darjeeling Hill Council. I have already said that the reason for making this exemption is to maintain the socio-cultural identity of that region and of the people. Now when you look at the overall federal structuring it appears that a wonderful experiment has been done under the Indian Constitution to empower self government, third tier government. Because this Panchayat and Municipalities are now with the 73<sup>rd</sup> and 74<sup>th</sup> amendments are now directly getting approval from the Constitution. The amendment has done is that amendment has also provided for two Schedules highlighting the areas subject matters on which Panchayat and Municipality can be entrusted in responsibility. Schedule XI and schedule XII talks about subject matters on which responsibility can be entrusted to Panchayat and Municipality.

And further it also says that when it comes to transferring the responsibility, delegating the responsibility it says that there could be two kinds of such responsibilities. One is to be excised by the State, it is mandatory for the State and other which State can delegate it to Panchayat and Municipality. Now question is that when the Constitution talks about such delegation is it an obligation on the part of the State to go for such devolution of power which is listed in Schedule XI and Schedule XII by framing laws. Now when you read the language of Article 243, the word used there is “may” and therefore, the discretion is there with the State to empower Municipality or Panchayat as per the wish of the State. There where what we find is the gap or lacuna with the strengthening of this third tier government which in a way now is an important institution of federal structuring.

Because now with Centre, State and third tier government all three of them they are drawing direct legitimacy from the Constitution. When the matter has gone to the court, court has also approved the power of the State on the matter of delegation to the Panchayat and the Municipality because court has said that the scheme of the constitutional amendment suggest that not only how and when, but whether to devolve the power at all to the local bodies is something which is the domain of the State Legislature. So, in this case of Zila Panchayat Ghaziabad v. State of Uttar Pradesh, the

court has said that this is an enabling provision it is not binding the State Legislature. It simply facilitates that if the State Legislature believes that yes such and such power is to be delegated they can do so. That is what further when you see this Ranga Reddy Dist. Sarpanch Association v. State of Andhra Pradesh you find that again it says that it is a discretionary provision and it does not impose any kind of obligation on the State Legislature to provide for such devolution of power.

Now, no doubt even though Panchayat and Municipality has not been entrusted with the responsibility as it is desirable or their functioning is yet to strengthen the federal arrangement in this country, but then one thing is very clear that they have got a potential to really empower people which is one of the aims of federal Constitution because federal Constitution has this uniqueness of allowing people to get represented through two governments – State government and the Federal government. With the third tier government getting a constitutional recognition, now people are getting represented through three governments. The third one is the Urban Local Bodies or Panchayats. So, that is what you find that Part IX and Part IXA bring in a newer kind of relationship on a federal arrangement in India between Parliament, State Legislature and Local government. And there the arrangement has been done in such a way that it is more power has been given to the State Legislature.

So, that significantly they can play a role in a strengthening empowering Panchayats. It is different issue that that kind of approach is not yet visible, not yet been seen on the matter of this delegation because it is the local government which is dependent upon the dependent upon the State government for finances, for the staffs, for enactment of bylaws. Therefore, what it ideally envisages is a sort of cooperative federal, but then for that what is needed is will power on the part of the State to entrust necessary responsibility upon the third tier government. Now, as I said that the arrangement also talks about asymmetric federalism which is reflection in Part IX and Part IXA where regions where tribal people are staying it has been suggested that without disturbing their arrangements on representation, their arrangements on socio cultural custom, socio cultural values they should not get disturbed with this arrangement and that is why exception has been made where it has said that for those areas which are satisfying that distinct culture, distinct ethnicity they need to be kept away, need to be left out from this arrangement and that is what Schedule VI refers to. What are the issues and problems when you look at it? You find that the structural issues are there and then regular election not happening. Apart from that you would also

find that there are issues with regard to devolution of funds, fund is not available to the Panchayats or Municipality whenever State is entrusting the responsibility. State is generally saying that you manage within the limited grant what you are getting or there is a process there is a challenge with regard to kind of functionaries because third tier government does not have any bureaucracy of its own and therefore, they are dependent upon the bureaucracy of the State government. So, we have the issues where you find that though the Constitution talks about having a inform structuring on local self-government, but then that inform it is missing when the when the State government is coming up with a legislation particularly for a specialized purpose. For example, area which is industrial area, like in the cities of Jamshedpur or Gandhinagar whether Municipality Act would be applicable or with regard to the areas which are notified as special economic zone under the Special Economic Zones Act of 2005. It is generally said that that role of local bodies shall be exempted and it is the Board of Approval and Development Commissioner who shall be responsible for doing that. So, you find this kind of exemptions

So, structural challenges are there. On these structural challenges when the matter has gone to the court of law, it is said that non-formation of Municipal Corporation at Gandhinagar is a complete go-bye. So, court has flagged and raised the concern. Supreme Court in this case of Saij Gram Panchayat v. State of Gujarat has not entered into the question whether the corporate entities running industrial townships exercise the sovereign function. The court has said that the issue of validity of notification of industrial township for exempting has been raised and right now the matter is pending in Jawaharlal Sharma v. State of Jharkhand.

Irregular election is another important issue which is somewhere not able to empower this Panchayats and Municipalities. Elections are not happening on the regular basis or it is like suspension of elected local bodies are happening, how the reservation matrix shall work, what shall be the identification of seats delimitation imitation exercise are the issues which are which are connected with that. We find that State government generally they interfere with the functioning of the local government and which in a way creates a sort of bottleneck in the functioning of the third tier government. So, somewhere when you look at the Panchayats and Municipality as one of the as one of the important pillars of federal structuring more requires to be done in order to make the grass root level democracy a real empowered one.

On the electoral issues, judiciary has been taking up this matter and when the matter has gone in this *Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad*, where the question was to whether Article 243U which says that duration of Municipalities fixed is mandatory in nature and any violation could be justified. The court has said that election shall be conducted before the expiration of the duration of five periods and the domain of elections to the Panchayats and Municipalities on a Part IX or Part IXA for the conduct of these elections enjoy the status of the Election Commission of India. So, it is a good judgment where the court is giving necessary power and authority to the State Election Commission and suggesting that election shall take place before the expiry of the life of the Panchayat and Municipality. Further when you look at it Supreme Court in this case of *Punjab Water Supply & Sewerage Board v. Ranjodh Singh*, discussed the aspect of control by The state government or local bodies and the court has said that the State makes exercise control over such local bodies strictly in terms and ambit of the Act by which local bodies are established. So, that way independence is not been given. Supreme Court in the case of *Champa Lal v. State of Rajasthan* again discussed the scope of Governor's discretion to categorize the area as a Nagar Panchayat for a transitional area, Municipal Council for a smaller urban areas or Municipal Corporation for larger urban areas.

The court has said that under the scheme of Article 243Q Governor is not free to notify area that is absolute discretion, but is required to come up with some objective criteria, some parameters which is necessary to define the category of area. Then *Bhanumati v. State of Uttar Pradesh*, which has been taken up to decide the legislative competence of the State to enact a provision for no confidence motion against Chairperson of a Panchayat. The court looked into the competency of this Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 from Schedule VII Entry 5 as the Constitution and says that a State Legislature to provide the details of election of Chairperson. So, where the court has said that there is a requirement of making the law and State has to come up with. That's what the court has read the legislative competence by reading Entry 5 of Schedule VII, List 2 and the court has said that a State does have a competence on this matter. Interestingly the NCRWC Report which has gone in detail on the functioning of Panchayat and Municipality and on the issue of having a distinct Part IX and Part IXA for the purposes of a divide between rural and urban areas.

NCRWC report which was headed by Justice Venkatachaliah suggested that it does not make much sense and therefore, what is required is to integrate Part IX and Part IXA and in one Part so, that better functioning is ensured. So, overall when you look at the functioning of third tier government it is a good experiment done, but then long way to go to really empower and strengthen this third tier government. So, that they become independent and they truly reflect the goal of self government in the federal structuring system. Thank you very much these are the references for this module.