

# **Constitutional Law and Public Administration in India**

**Prof. (Dr) Sairam Bhat**

**Centre for Environmental Law, Education, Research and Advocacy (CEERA)**

**National Law School of India University, Bengaluru**

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## **Local Self Governance**

The 73<sup>rd</sup> and 74<sup>th</sup> Amendments of the Constitution created two important bodies within the Constitution. The 73<sup>rd</sup> Amendment gave birth to the Panchayati Raj systems in the country and the 74<sup>th</sup> Amendment gave birth to the urban local bodies in the country. So, with the 73<sup>rd</sup> and 74<sup>th</sup> Amendments these two have become part of the constitutional bodies. As to the evolution of the Panchayati Raj system in India, self-governing village communities have always existed in the form of village assemblies or Panchayats which took care of issues at the village level. So, the local government bodies with elections to it just like the government at the center or the state is a phenomenon that was there from the British era. Lord Rippon had created what was called the local boards. Later, the village Panchayats were established under the Government of India Act of 1919 and were continued in the Government of India Act 1935 as well. Gandhiji was a staunch proponent of decentralization of power.

He wanted each village to constitute a republic so that it would be self-sustaining and capable of managing its own affairs. In the constituent assemblies in the debates of the constituent assembly there were many people who agreed with Gandhi's vision of local self-government at the village level and strongly advocated for it. However, there were also many strong oppositions to this idea, and these came from none other than the stalwarts in the Constituent Assembly like the Prime Minister Jawaharlal Nehru who was skeptical of the idea because he thought that it would pose a threat to the unity and integrity of India.

Dr. B. R. Ambedkar was also someone who was not keen on having local self-governments at the village level because he believed that this would perpetrate evils like caste-based discrimination or religious-based discrimination. So, they were all very skeptical of the idea of local self-government at the level of villages. Nonetheless, the idea of Panchayati Raj was incorporated as a directive principle of state policy when the constitution came into force. Under Article 40 of the constitution the state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

This has been incorporated as a directive principle of state policy. The directive principle of state policy is non-justiciable, and they are only advisory in nature. The idea of local self-government has always been there. So, even before the 73<sup>rd</sup> and 74<sup>th</sup> Amendment Act came into force in 1993, there were some states like Gujarat and Maharashtra which had adopted the Panchayati Raj system from the 1960s. But the problem was that there was no uniformity amongst states. There were only a few states which had incorporated this idea. Also, there were no regular elections that were held to the Panchayati Raj institutions. In some cases, the Panchayati Raj institutions would be dismantled and there would be no fresh elections to replace the one that was just the one's tenure that just got over. So, the government began constituting various government committees to study this issue and to understand what could be done better to reform this local self-government system in India. So, one of the first committees to study this issue was the Balvant Rai Mehta committee.

This committee proposed the idea of a three-tier Panchayati Raj system and this committee also proposed that there should be direct elections to the Panchayati Raj institutions at the village level that is at the most basic level and there should be indirect elections to the tiers that are above the village level at the block and district level. And the Balvant Rai Mehta committee proposed that planning and development activities should be entrusted with the local self-governance. After that in 1977, there was the Ashok Mehta committee. He and his committee proposed that instead of the three-tier system, there should be a two-tier system. There should be a Zilla Parishad at the district level and there should be another one called Mandal Panchayat below the Zilla Parishad which will comprise a group of Panchayati. Then in 1985, the G V K Rao Committee recommended that the Zilla Parishad at the district level should be the principal body and the office of the district development commissioner should act as the CEO of the Zilla Parishad.

This G. V. K. Rao committee proposed that regular elections should be held to the office of Panchayati Raj institutions. It was only the L.M. Singhvi Committee proposed that there should be a separate chapter devoted to the constitutional recognition of Panchayati Raj systems and it also proposed that judicial tribunals should be evolved for settling the election disputes, election disputes arising from the elections to the Panchayati Raj institutions. The committee which came after L M Singhvi committee is very crucial.

The P K Thungon Committee reiterated the demand for constitutional recognition and it also proposed that there should be a fixed tenure of five years. More importantly it was this committee which proposed that there should be reservation for members coming from the Scheduled Caste, Scheduled Tribe communities and reservation for women in the seats that are there in the Panchayati Raj institutions. In the same year another committee was also constituted called the Gadgil Committee. This committee proposed that there should be a separate state finance commission for devolving funds to the Panchayati Raj institutions and there should be a state election commission separate from the election machinery that is otherwise there to conduct the elections to the Panchayati Raj institutions. When the

Panchayats were finally added to the constitution by virtue of the seventy third amendment act in 1991, a lot of these provisions which were recommended by various committees over the course of years, they were incorporated in one form or the other. So, all of these major recommendations were reflected in the final form of seventy third amendment act 1991. Although this amendment act was enacted in 1991, it came into force only in 1993. So, the Panchayats were added to the constitution as a separate chapter through the seventy third amendment. This is called the Part IX of the constitution. This seventy third amendment also added the eleventh schedule to the constitution.

The basic structure of the system needs to be understood. First of all, there is a gram sabha. This gram sabha would comprise all the adult members who are registered as voters in the Panchayati area and the functions and the role that is to be played by gram sabha will be decided by a state legislation. We have a separate three-tiered system of the Panchayati Raj institutions with the gram panchayat at the base covering villages or a group of villages. Above that is the block level or the taluk level or the mandal level. These may be known by different names in different places. But the block level or the mandal level may not be constituted in smaller states. At the apex level, we have the zilla panchayat which covers the entire district, entire rural area of the district. The Panchayati Raj system does not apply to certain areas called the fifth schedule areas and certain states in the sixth schedule areas. The features of the Panchayati Raj institutions are as follows:

First of all, direct elections are conducted to all the three levels of the Panchayati Raj institutions. That means all the representatives are directly elected by the people and the term of each Panchayati body is five years. Now, if the state government dissolves the Panchayati before the end of its five-year term, fresh elections must be held within six months of such dissolution. This is an important provision which ensures that local self-governments are not left in vacuum and that they will continue to be in existence. Before this amendment, in many states there used to be indirect elections to local bodies and it used to be fragmented because no elections used to be held immediately after dissolution.

So, the 73<sup>rd</sup> Amendment has sought to provide against this by ensuring that there will be regular elections once the term of a Panchayati Raj institution is over. Another interesting feature in the Panchayati Raj system is that there are seats which are reserved for candidates belonging to Scheduled Caste communities or Scheduled Tribe communities. This was a very important recommendation that was made by the P K Thungon Committee. So, this has been incorporated in the 73<sup>rd</sup> Amendment. For other backward castes, the states may provide reserved seats if they find it necessary.

The seat reservation for SC and ST community candidates is something that we have already discussed in the context of parliamentary and state legislative assembly elections. However, there is another provision that makes this entire system of Panchayati Raj institutions more interesting. One third of the positions in all Panchayati Raj institutions

are reserved for women. This reservation of one third of the seats of women is not merely in the general category seats but also in the seats reserved for scheduled caste and scheduled tribe communities. This means that a seat may be simultaneously reserved for a woman candidate who is belonging to Scheduled Caste or Scheduled Tribes.

Furthermore, these reservations do not only apply to the ordinary members of the Panchayats but also at the level of the chairperson or the *adhyaksha* that is there at all the three levels. So, this means that because of the mandatory reservation there may be a woman candidate who is a chairperson who is also simultaneously belonging to the SC, ST community. This is a very refreshing change. There have been many attempts to introduce such a mandatory reservation of seats for women in the parliament and the state legislatures as well. Many bills have been formulated in this regard but most of them have failed to see the light of the day.

It is in this backdrop that it becomes necessary to appreciate how mandatory reservation for women has been introduced in the Panchayati Raj institutions and that too a reservation within the SC, ST seats as well ensuring that women belonging to all communities would get adequate representation in the local self-government. Now, when it comes to the functions, the Panchayati Raj institutions are expected to deal with preparing plans for economic development and social justice. But what all powers can be exercised by the Panchayati will be determined by the state government through legislation. The Panchayats will mostly deal with plans and schemes related to matters that fall within the ambit of the 11<sup>th</sup> Schedule which was also introduced by the 73<sup>rd</sup> Amendment.

In the 11<sup>th</sup> Schedule there are subjects like agriculture, drinking water, rural housing, health, sanitation, etc. There are 29 subjects in the 11<sup>th</sup> Schedule most of which are linked to the development and welfare functions at the local level. So, it is the state government which decides how many of these 29 subjects in the 11<sup>th</sup> schedule should be transferred to the local self-government at the Panchayati level. Another important feature of the Panchayati Raj institution is that there is a state election commissioner who is appointed for conducting elections to the Panchayati Raj institutions. This state election commissioner is appointed by the concerned state government for conducting exclusively the elections to the Panchayati Raj institutions.

This state election commissioner is independent of the election commissioner of India. This is also an important safeguard that was recommended through one of the committees. Two additional safeguards have been provided to the state election commissioner. First, he can only be removed on like manner and on like grounds as a judge of the high court and second, there can be no variation of conditions in his service once he has been appointed. These are comparable to the safeguards that are provided to the chief commissioner under the Election Commissioner of India. But it is very important to note that the state election commissioner that has been constituted for conducting elections to Panchayati Raj

institutions is independent of the election commissioner of India. Then there is also a State Finance Commission which is constituted once every five years. This commission examines the financial position of the local governments in the state. It also reviews the distribution of revenues that are there between the state and the local governments and between the rural and urban local governments.

So, this creation of a state finance commission ensures that the Panchayati Raj institutions get funds allocated to them independent of the executive or the legislature and it is not converted as a political issue. One more important feature of the Panchayati Raj institutions is that the state government can authorize the Panchayats to levy, collect and appropriate taxes, duties, and tolls. So, this will also go into the revenue system of the Panchayati Raj institutions. In addition, the state government can also constitute separate funds for crediting the money that the state government receives by or on behalf of the Panchayats and the audit of the accounts of the Panchayati Raj institutions are done by the concerned state legislature. So, this is an overview of the salient features of the Panchayati Raj institutions which have been introduced through the 73<sup>rd</sup> Amendment Act.

Among the features of the Panchayati Raj institutions, some of the provisions are mandatory. They have to be enacted by the state legislature, but some of the provisions are direct. So, in these provisions, the state legislature can take a liberty and can frame the provisions according to its discretion. Let us look into what are the mandatory provisions in the Panchayati Raj system. So, the state legislation that recognizes this Panchayati Raj system that has to constitute the gram sabha, has to constitute the three-tier Panchayati system. Then there should be a direct election to Panchayats and an indirect election to the post of chairperson. The tenure of five years is fixed. So, the state legislation cannot tamper with that. And 21 years is the minimum age for contesting elections to any of the posts within the Panchayati Raj institutions. So, that also cannot be altered. Then the state legislation establishing the Panchayati Raj institution has to provide reservation for SC/ST community and the one-third reservation that is applicable to women. The establishment of State Election Commissioner and the State Finance Commission are also mandatory provisions. So, the state legislation has to have all of these provisions. The state legislature may provide that in the Panchayati Raj system, there has to be such proportion of representation for the MLAs within that particular constituency or the MPs who are there in that particular constituency.

This is a directory provision. This is not mandatory. Then it is up to the state government to decide whether the Panchayati Raj system in its state should have a reservation for other backward castes. It is a state government which decides which of the functions within the 11th schedule, which of the matters within the 11th schedule should be transferred to the Panchayati Raj institutions. So, it will depend on the state legislature's decision to transfer which among the subjects to the Panchayati Raj institutions that will decide what all are the functions that are to be performed by the Panchayati Raj institutions. For example, if

the matter of agriculture is transferred to the Panchayati Raj institution in a particular state, that Panchayati Raj institution will have a role to play in implementing the schemes and planning the schemes related to agriculture.

But if that is not transferred and that is retained by the state government with itself, then the Panchayati Raj institution will not have any role to play. So, the power, authority and responsibility, the extent, scope, and ambit of all of this of the Panchayats is decided by the state legislature. Through the legislation that is enacted by it. So, there are no mandatory provisions there. Then the state legislature also authorizes the Panchayats to collect tax fees and tolls. This is also not a mandatory obligation. The state may authorize the Panchayats, the states may not. So, these are the mandatory and directory provisions within the 73rd amendment, within the part IX of the constitution. The system of Panchayati Raj institutions does not apply to fifth scheduled areas in the constitution. The fifth scheduled areas are some states which are included in the fifth schedule because of the tribal populations that are there in the states. There are some special provisions that are made applicable to the fifth scheduled areas.

In these states, the local self-government is brought into existence through other legislation and not through the constitution. This legislation is called the Panchayat (Extension to the Scheduled Areas) Act 1996 or the PESA. This is applicable only to the fifth schedule areas and not to the sixth schedule areas. Many of the tribal communities have their own traditional customs of managing common resources such as forests, water reservoirs, etc. Therefore, PESA protects the rights of these communities to manage their resources in ways that are acceptable to them.

How does PESA or the Panchayat extension to scheduled areas Act provide for this? It gives more powers to the gram sabhas in the fifth scheduled areas. For instance, gram sabha has been given the power to safeguard or preserve the customs, traditions, cultural identity and customary modes of dispute resolution of the tribal communities. The gram sabha has to approve the socio-economic development projects before they are taken up for implementation by the Panchayats. The gram sabha has to be consulted before land is acquired and rehabilitation takes place. Gram sabha's approval is mandatory before any license is granted for mining projects.

In all of these aspects, gram sabha's role is more prominent in fifth scheduled areas and this gram sabha operates with a view to further the tribal communities and traditions to ensure that their traditions do not get eroded with the introduction of modern systems such as elected Panchayati systems. So that is the very idea behind PESA to ensure that there is a balance between the local traditions of tribal communities and the modern elected bodies.

The 74<sup>th</sup> Amendment Act was enacted in 1991 for urban local bodies. The urban local bodies, also called municipalities, have a three-tier structure. There is a nagar panchayat

for a transitional area that is to say an area that is in transition from a rural area to an urban area. There is a municipal council for a smaller urban area and there is a municipal corporation for a larger urban area. So what amounts to transitional areas, what amounts to smaller urban areas or what amounts to larger urban areas, all of these would depend on the population, the revenue, the percentage of employment etc. In many ways, the 74th Amendment is a repetition of the 73<sup>rd</sup> Amendment except that it applies to urban areas. So all the provisions of 73<sup>rd</sup> Amendment relating to direct elections, reservations, transfer of subjects to the 12th schedule, State Election Commission, State Finance Commission are all incorporated in the 74th Amendment as well. All of these provisions apply to urban local bodies as well. One additional provision that is there in Part IXA that establishes municipalities is the constitution of a committee for district plan. This committee for district planning consolidates the plans that are prepared by Panchayats and the municipalities in the district, and they also prepare a draft development plan for the district as a whole. There is also a committee for metropolitan planning within the municipalities.

This is for the preparation of a development plan for the metropolitan area as a whole. The details of the committee for district planning and the committee for metropolitan planning will have to be worked out by the concerned state governments. The aspects of mandatory and directory provisions are very similar and comparable to that of Panchayati Raj institutions. The only additional mandatory provision in the case of municipalities is the establishment of the committee for district planning and the committee for metropolitan planning in the metropolitan area. So apart from this all of the other provisions which were mandatory in the case of Panchayati Raj institutions became mandatory in the case of municipalities also and the provisions which were directory are continued to be directory in the case of municipalities as well.