



Golden Research Thoughts

International Recognition Multidisciplinary Research Journal

ISSN: 2231-5063

Impact Factor : 3.4052(UIF)

Volume - 5 | Issue - 7 | Jan - 2016



Basavaraj Benakanahalli

PANCHAYATI RAJ SYSTEM AND 73RD AMENDMENT



¹Basavaraj Benakanahalli and ²S.A. Palekar

¹Research Scholar, Department of Political Science, Gulabrga University,
Kalaburagi Karnataka.

²Department of Political Science, Gulabrga University, Kalaburagi Karnataka.

ABSTRACT

To rejuvenate the Panchayati Raj, Rajiv Gandhi Government presented 64th Constitution Amendment in the Parliament in 1989 and V.P. Singh Government presented 74th Constitutional Amendment Bill in September 1990. Be that as it may, the Lok Sabha broke down and both the bills couldn't be passed. The P.V.Narsimha Rao Government has presented the 72nd Constitutional Amendment Bill in Parliament in September, 1991 for reinforcing the PRIs in the nation. The Bill was gone as 73rd Constitutional Amendment Act, 1992 by the Parliament which was told by the Central Government through Official Gazette on April 20, 1993 as it got sanction by the state assemblies and was consented by President of India. After warning the Panchayati Raj Institutions have now got protected authenticity.

KEYWORDS :Panchayati Raj, Rajiv Gandhi, Central Government .

1.INTRODUCTION:

The passage of the Constitution (73rd Amendment) Act, 1992 marks a new era in the federal democratic set up of the country and provide constitutional status to the Panchayati Raj Institutions (PRI). Consequent upon the enactment of the Act, almost all the States/UTs, except J&K NCT Delhi and Uttaranchal enactment have enacted their legislation. Moreover all the States /UTs except Arunachal Pradesh, NCT Delhi and Pondicherry, all others States/UTs have held elections. As a result, about 2,32,278 Panchayats at village level; 6022 Panchayats at intermediate level and 535 Panchayats at the

district level have been constituted in the country. These Panchayat are being manned by about 29.2 lakh elected representatives of Panchayats at all levels. Thus, this is the broadest representatives base that exist in vary country of the world-developed or under-developed.

THE SALIENT FEATURES OF THE SEVENTY-THIRD CONSTITUTIONAL AMENDMENT ACT MAY BE SUMMARIZED AS FOLLOWS:

The Constitutional (73rd Amendment) Act, 1992 has added a new Part IX consisting of 16 Articles and the Eleventh Schedule to the Constitution. The 73rd Amendment Act envisages the Gram Sabha as the foundation of the Panchayati Raj System to perform functions and power entrusted to it by the State legislatures. The amendment provides for a three tier Panchayat Raj System at the village, intermediate and district levels. Small states with population below twenty lakh have been given the option not to constitute the Panchayats at the intermediate level. The Act provides that the Panchayat bodies will have an assured duration of five years, with elections mandatory after this period. However, one thing is to be noted that under the Amendment Act the establishment of Panchayats and the devolution of necessary powers and authority on the Panchayati Raj institutions are vested in the States Governments. In view of this it may be said that the success of the Panchayati Raj institutions as a unit of democracy and thereby ushering an all around development of rural areas will much depend on the intention and support of the States Governments. Without honest intention, these institution would be misused by rural rich and the poor an illiterate masses will remain a mute supporters as it is happening in Parliamentary and State Assembly elections in the Country.

GRAM SABHA:

Article 243A provides that the Gram Sabha may exercise such powers and perform such functions at the village levels as the legislature of a State may by law provide. The 73rd amendment thus envisages the Gram Sabha as the foundation of Panchayati Raj System. 'Gram Sabha' means a body consisting of persons registered in the electoral rolls relating to village comprised within the area of Panchayat at the village level.

CONSTITUTIONS OF PANCHAYATS:

Article 243B visualizes a three tier Panchayati Raj System. It provides that in every states there shall be constituted Panchayats at the village, intermediate and district levels. Small states having a population not exceeding twenty lakhs have been given an option not to constitute the Panchayats at the intermediate level.

COMPOSITION OF PANCHAYATS:

Article 243 provides that, subject to the procurements of this part the governing body of a State might by law make procurements concerning the sythesis of Panchayats. In any case, the proportion between the number of inhabitants in the regional range of a Panchayat at any level and the quantity of seats in such Panchayats to be filled by decision might. So far as practicable, be the same all through the States.

Every one of the states in a Panchayat might be filled by persons picked by direct decision from regional voting public in the Panchayat region. For this reason every panchayat's zone might be isolated into regional voting demographics in such way that the proportion between the number of inhabitants in every voting demographics and the quantity of seats dispensed to it, so far as practicable, be the same all through the Panchayat region.

THE LEGISLATURE OF A STATE MAY BY LAW PROVIDE FOR REPRESENTATION OF FOLLOWING PERSONS IN PANCHAYATS:

- (a) The Chairpersons (Chairman) of the Panchayats at the village level, in the Panchayats at the intermediate level or in the case of a States not having Panchayats at the intermediate level, in the Panchayat in the district level;
- (b) The Chairpersons of the Panchayat at the intermediate level, in the Panchayats at the district level;
- (c) The member of the Lok Sabha and legislative assembly of the State representing constituencies which compromise wholly or partly a Panchayat area at the level other the village level. In such Panchayats;
- (d) The members of the Raja Sabha and Legislative Council of the State where they are registered as electors.

The Chairpersons of a Panchayat and the other members of Panchayat whether or not chosen by direct election from territorial constituencies in Panchayat area shall have the right to vote in the meetings of Panchayat.

The Chairperson of a Pannchayat at the village level shall be elected in such a manner as the legislature of a State may by law, provide. The Chairperson of a Panchayat at the intermediate level or district level shall be elected by, and amongst, the elected member's therof.

DISQUALIFICATION FOR MEMBERSHIP: A PERSON SHALL BE DISQUALIFIED FOR BEING CHOSEN AS, AND FOR BEING A MEMBER OF PANCHAYAT:

- (a) If he is so disqualified by or under any law for the time being in force for the purpose of elections to the legislature of the State concerned;
- (b) If he is so disqualified by or under any law made by the legislature of the State.

But no person shall be qualified on the ground that he is less than 25 years of age, under clause (a), if he has attained the age of 21 years.

If any questions arise as to whether a member of a Panchayat has become subject to any of the qualifications mentioned in clause (1) the question shall be referred for the decision of such authority and in such manner as the legislature of a State may, by law, provide.

REPRESENTATION OF SEATS IN PANCHAYATS:

Article 243D provides that in every Panchayat seats so reserved shall be, as nearly as may be, in the same proportion to the number of seats to be filled by direct election in that Panchayat as the population of the SC and ST in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in Panchayat.

Out of total number of seats reserved under clause (1) not less than 1/3 seats shall be reserved from women belonging to the SCs and STs. [Clause (2)] Out of total number of seats to be filled by direct election in every Panchayat not less than 1/3 (including the number of seats reserved for the SCs and STs women) seats shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat. [Clause (3)]

The office of the Chairpersons in the Panchayat at the village or any other level shall be reserved for SCs, STs, and women in such manner as the legislature of a State may, by, law, provide. But the number of office of Chairpersons reserved for the SCs and STs in the Panchayats each level in any States shall be, as nearly as possible, in the same proportion to the total number of such officers in the

Panchayat at each level in proportion of the total population of SCs and STs in States. However, not less than 1/3 of the total number of the officer of the officer of Chairperson in the Panchayat at each level shall be reserved for women. The number of officers reserved under this clause shall be allotted by rotation to different Panchayat at each level.

The reservation of seats under clauses (1) and (2) the reservation of officers of Chairperson (other than the reservation for women) under clause (3) shall cease to have effect on the expiration of the (50) specified in Article 334 [Clause(5)].

Reservation for Backward Classes: The legislature of a State is empowered under clause (6) to make provision of reservation of seats in any Panchayat or office of Chairpersons in the Panchayats at any level in favor of backward classes of citizens.

DURATION OF PANCHAYATS :

According to Article 243E each Panchayat, unless sooner broke down under any law for now, should proceed for a long time from the date selected for its initially meeting. No change of any law in power should have impact of bringing about disintegration of a Panchayat at any level which is working before such revision till the close of its normal period of five years.

AN ELECTION TO CONSTITUTE A PANCHAYAT MUST BE COMPLETED:

- a) Before the expiry of its span;
- (b) Before the close of a time of six months the date of its disintegration.

In any case, where the rest of the period for which the broke down Panchayat would have proceeded in under six months, it should not be important to hold any race under this provision for constituting the Panchayat for such period.

POWERS, AUTHORITY AND RESPONSIBILITY OF PANCHAYATS:

Article 243G, gives that subject to the procurements of this Constitution the lawmaking body of a State might, by law, supply the Panchayats with such powers and power might be important to empower them to work as a foundation of self government. Such law might contain procurement for the devolution of forces and obligations upon Panchayats subject to such conditions as might be determined in that, concerning:

- (a) the arrangement of arrangements for financial improvement and social equity;
- (b) the execution of plans for social advancement and social equity as might be endowed to them incorporating those in connection to the matters recorded in the Eleventh Schedule are as per the following :

1. Farming, including horticultural expansion.
2. Land change, execution of area changes, land union and soil preservation.
3. Minor watering system. Water administration and watershed advancement.
4. Animal cultivation, dairying and poultry.
5. Fisheries.
6. Social ranger service and ranch ranger service.
7. Minor timberland produce.
8. Small-scale commercial ventures, nourishment preparing businesses.
9. Khadi, town and house commercial ventures.
10. Rural lodging.

11. Drinking Water.
12. Fuel and feed.
13. Roads, ducts, spans, ships, conduits and different method for correspondence.
14. Rural charge, including circulation of power.
15. Non-traditional vitality sources.
16. Destitution easing Program.
17. Education, including essential and optional schools.
18. Technical preparing and professional instruction.
19. Audit and non-formal instruction.
20. Libraries.
21. Cultural exercises.
22. Markets and fairs.
23. Health and sanitation, including clinics, essential wellbeing focuses and fairs.
24. Family welfare.
25. Women and kid advancement.
26. Social welfare, including welfare if the disabled and rationally hindered.
27. Welfare of the weaker segments, and specifically, of the Scheduled Castes and the Scheduled Tribes.
28. Public circulation framework.
29. Maintenance community assets.

It is to be noted that Article 243G is subject to the provisions of the Constitution. This means that the normal distribution of powers under Articles 245 and cannot be effected by the State legislature while vesting with powers and authorities upon the Panchayats.

POWERS TO IMPOSE TAXES AND FUNDS OF PACHAYATS: ARTICLE 243H EMPOWERS A STATE LEGISLATURE TO MAKE BY LAW PROVISION FOR IMPOSING TAXES ETC. BY THE PANCHAYATS, SUCH A LAW:

- (a) Authorize a Panchayat to impose, gather and suitable such expenses, obligations, rolls and charges as per such purposes and subject as far as possible;
- (b) Assign to a Panchayat such assessments, obligations, tolls and charges required and gathered by the State Government for such purposes and subject to such conditions and breaking points;
- (c) Provide for making such allows in-help to the Panchayats from the Consolidated Fund for the State; and
- (d) Provide for constitution of such supports for crediting all cash got, by or for the benefit of the Panchayats furthermore for the withdrawal of such cash in this manner.

FINANCE COMMISSION:

Article 243-I provides for the establishment of a Finance Commission for reviewing budgetary position of the Panchayats. The Governor of a State might inside of one year from the initiation of the Constitution (73rd Amendment) Act, 1992 and from that point at the lapse of each fifth year, constitute a Finance Commission. The assembly of the State might by law, accommodate the piece of the commission, the capabilities essential for arrangement of its individuals and the way in which they should be chosen.

IT SHALL BE THE DUTY OF THE FINANCE COMMISSION TO REVIEW THE FINANCIAL POSITION OF THE

PANCHAYATS AND MAKE RECOMMENDATIONS TO THE GOVERNOR AS TO:

(a) The standards which ought to represent:

(i) The dissemination between the State and the Panchayats of the net continues of the assessments, obligations, tolls and charges leviable by the State, which might be separated between them under this Part and the allotment between the Panchayats at all levels of their individual shares of such continues;

(ii) The determination of the charges, obligations, tolls and expenses which might allotted to, or appropriated by the Panchayats from the Consolidated Fund of the States;

(b) The measures expected to enhance the budgetary position of the Panchayats;

(c) Any other matter alluded to the Finance Commission by the Governor in the hobbies

The Commission might decide its method and should have such powers in the execution of its capacities as the State lawmaking body might, by law, give on it.

The Governor might bring about each proposal made by the Commission together with an informative notice as to the move made consequently to be laid before the assembly of the States;

“The States finance Commission under Panchayati Raj Law is designed to ensure regional balance in the distribution of state and Central Funds.”

AUDIT OF ACCOUNT OF PANCHAYATS:

The governing body of a state might, by, law, make procurement concerning the upkeep of records by the Panchayats and the evaluating of such records.

E

Decision to the Panchayats: Under Article 243K the superintendence, bearing and control of the readiness of discretionary rolls and lead of all races to the Panchayats might be vested in a State Election Commission comprising of the State Election Commissioner to be delegated by the Governor. Subject to the of any law made by the State assembly, the states of administration and residency of office of the State Commissioner might be, for example, the Governor might by guideline decide. The State Election Commissioner might not be expelled from his office with the exception of in like way and on like grounds as a Judge of a High Court. States of administration of the State Election Commissioner should not be fluctuated to his detriment after his arrangement.

The State lawmaking body might, subject to the procurements of this Constitution, by law, make procurement regarding all matters identifying with or regarding races to the Panchayats.

PART NOT TO APPLY TO CERTAIN AREAS: ARTICLE 243M PROVIDES THAT PART 9 SHALL NOT APPLY TO FOLLOWING AREAS:

1. The planned zones alluded to in proviso (1) and tribal zones alluded to in condition (2) of Article 244;
2. The State of Nagaland, Mizoram;
3. The slope regions in the State of Manipur for which District Councils exist under any law for the present in power;
4. To Panchayats at the locale level of the slope regions of the District Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for time being in power;
5. Shall influence the capacities and forces of the Darjeeling Gorkha Hill Council constituted under such law.

NOTWITHSTANDING ANYTHING IN THIS CONSTITUTION:

(a) The State Legislature of Nagaland, Meghalaya and Mizoram might, by law, extend this Part to that,

State, Except the zones alluded to in condition (1) if the Legislative Assembly of that State passes a determination to that impact by a greater part of the aggregate enrollment of that House and by a lion's share of at the very least two-third of the individuals from that Houses present and voting;

b)Parliament might, by law, broaden the procurements of Part 9 to the booked territories and Tribal ranges alluded to in provision (1) subject to such exemptions and adjustments as might be determined in such law, such law should not be considered to be alteration of this constitution for the reasons of Article 368. Continuation of Existing Laws and Panchayats: Article 243N gives that despite at whatever time in Part 9 of any procurement of any lae identifying with panchayats in power in a State quickly before the initiation of the Constitution (73rd Amendment) Act, 1992, which is conflicting with the procurements of Part 9, should keep on being in power until corrected or canceled by a capable lawmaking body of other equipped power or until the close of one year from such beginning, whichever is prior.

Nonetheless, every one of the Panchayats existing instantly before such Government should proceed till the close of their length of time, unless sooner broke down by determination went by the Legislature Assembly of that State or in a State having a Legislative Council, by every House of the Legislature of the State.

Courts not to meddle in Electoral Matters: Article 243-O bars the impedance by courts in constituent matters of Panchayats. It gives that despite anything in this Constitution the legitimacy of any identifying with the delimitation of voting public or the allocation of seats to such bodies electorate made under Article 243K might not be brought in que.

FINANCIAL POWERS OF PANCHAYATI RAJ INSTITUTIONS

Article 243-G of the Constitution of India—introduced by the 73rd Amendment—deals with the question of powers, authority and responsibilities of Panchayats. It reads thus:

“Subject to the provisions of the Constitution, the legislature of the State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subjects to such conditiond as may be specified therein, with respect to—

- (a) The preparation of plans for economic development and socal justice;
- (b) The implaementation of such schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh schedule.”

While Article 243-G of the Constitution visualizes Panchayats as institutions for self-government, it subjects the extent of devolution of powers and functions to the will of the State Legislatures.

AS PER ARTICLE 243-H OF THE CONSTITUTION, STATE LEGISLATURES HAVE BEEN EMPOWERED TO ENACT LAWS;

- To authorize a Panchayat to levy, collect and appropriate some taxes, duties, tolls and fees;
- To assign to the Panchayat, some taxes, duties, tolls levied and collected by the State Government;
- To provide ffor making grants-in-aid to the Panchayats from the Consolidated Fund of the State; and
- To provide for constitution of such funds for Panchayats for crediting all money received by or on behalf of Panchayats and also the withdrawal of such money there from.

Article 243-I of the Constitution provides for constitution a state Finance Commission (SFC) to

review the financial position of Panchayats and to make recommendations to the Governor regarding the principles governing the major issues mentioned in Article 243-H.

The Constitution requires the Central Finance Commission to recommend measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State. The Tenth Finance Commission, for want of SFC reports, made an adhoc provision of Rs. 4,381 crores to the PRIs for the period 1996-2000.

The Eleventh Finance Commission has sanctioned Rs. 1,600 crores annually for Panchayats and Rs. 400 crores for municipalities to be distributed among the States. We can debate whether this Rs. 8,000 crores from the center for the coming four years is an adequate amount for nearly 2.5 lakhs Gram Panchayats, 6,000 intermediate and 500 district level panchayats to become the third tier of the Government. But it goes to the credit of the EFC that it has given enough viable proposals as to how to enhance the financial capacity of the Panchayats.¹²

The most important recommendations of the EFC pertain to enhancing the revenue of the local bodies through property tax and house tax, octroi/entry tax and user charges. The commission noted that the property or house taxes are not revised periodically, octroi is a contentious issue but there is a need for "a suitable tax that is buoyant and can be collected by local bodies." The face of the matter is that hitherto the local bodies have been shying from raising resources fearing unpopularity.

CRITICAL EVALUATION

There are some major flaws in the Act. It has not clearly defined the role of political parties. Nowhere had it mentioned that political parties can enter into election arena in their formal capacity. Similarly, it is completely silent over the relationship between Panchayati Raj Institution and local level bureaucracy.

The most hotly debated problem till recently, was giving constitutional recognition to the Panchayati Raj Institutions. But after the 73rd constitutional legitimacy. Again much talked about problem in regard to the functioning of Panchayati Raj Institutions was related to their structure as there was lack of uniformity. It is heartening to note that the present Amendment Act will help accelerate not only uniformity in structure but will also achieve that basic philosophy of checking the growing importance and interference of affluent sections of society.

Panchayati Raj Institutions by and large, failed because of irregular elections and frequent supersession and suspension. This chronic problem has rightly been taken care of by the 73rd amendment and it is hoped that now they will prove to be viable institutions of grassroots democracy as there will be periodic elections within a time frame.

Yet another problem connected to this had been love-hate relationship between the local level bureaucracy and the elected representatives of Panchayati Raj Institutions. Due to the lack of defined roles for the two, both used to move in different directions due primarily to lack of proper coordination. This had been one of the important causes of the failure of the Panchayati Raj Institutions. Unfortunately the present amendment to the Constitutions too has left this problem untouched and authorized the State legislatures to make suitable provisions to tackle this lacunae. Since the state level bureaucracy is more dominant and plays an important role in formulating any policy and legislations, it is still doubtful whether the problem of relationship between local level bureaucracy and elected representatives of Panchayati Raj Institutions will be properly attended by the State legislatures.

CONCLUSIONS

It is not enough to build up a case for revival of Panchayati Raj. One must also take about prerequisites of the revival so that Panchayati Raj may not undergo another eclipse on the earlier pattern. There has to be a commitment to Panchayati Raj as a political value and the consequent political will to establish it. What one really needs today is another Nehru who could say with a sense of pride as he did while inaugurating PR in Rajasthan in 1959: "We are going to lay the foundation of democracy or panchayati Raj in your country." Secondly, it should also not be forgotten that the effort to revive Panchayati Raj is, in fact, an attempt to reconstruct Indian polity. For example, it entails great effort to decentralize genuine power in terms of a continuum from the Union to the States and, in turn, from states to the urban and rural local government bodies. Indeed, "the Panchayati Raj Institutions at grass-roots level are ensuring greater people's participation and involvement in development work." The most important feature of the second generation Panchayat's is their change from local development organization to local political Institutions.