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Concept of Panchayati Raj and Its Constitutional Perspective in India

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	Abstract
<p>Nitin Associate Professor, School of Law, Maharaja Agrasen University, Baddi, Solan, Himachal Pradesh, India</p>	<p>Panchayati Raj , the system of local governments in India, is one of the most challenging topics when it comes to institutional change, a quintessential issue that underpins politics in changing societies. In the Indian case the period from independence in 1947 to the 73rd Amendment Act in 1992, which unified the relevant legislation, is a case in point. This period of development and change is, from an institutional point of view, not well researched. In a democracy, it is not sufficient to have an elected government at the centre and at the State level. It is also necessary that even at the local level, there should be an elected government to look after local affairs. In this chapter, you will study the structure of local government in our country.</p> <p>Keywords: Constitution, Panchayati Raj, Democracy, Swaraj.</p> <p>Introduction</p> <p>Panchayati raj as a system of local self-government envisages a three tier arrangement. Firstly, at the village level, secondly at the block level and thirdly at the district level. The institution of the village level is known as (Gram) Village Panchayat, at the block level is Panchayat-Samiti and at the district level is known as ZilaParishad.</p> <p>Himachal region, before 1947, consisted of thirty small princely States, all independent of each other, not under the sovereignty of the British crown. Hence there was no single Act in operation till 1939 when Punjab Village Panchayat Act, 1939 was adopted. The entire Himachal region underwent a series of metamorphic changes, both political and administrative till 25 January 1971 when it became eighteenth State of Indian Union. Gram Panchayat and PanchayatSamities enjoyed a certain level of status and powers. Himachal Pradesh enacted a new Panchayat Raj legislation, known as Himachal Pradesh Panchayati Raj Act, 1994, in conformity with the provision of the Constitution (73rdAmendment) Act, 1992.</p> <p>The judicial functions and powers of Gram Panchayat are covered in Chapter IV of Panchayati Raj Act, 1994. It deals with many details like offences cognizable by Gram Panchayat, penalties to the accused and compensation to the aggrieved, extend of jurisdiction, etc. However, there is a need to study its present status and relevance in the present context. The gram Panchayats have been empowered to conduct and decide cases relating to minor offences under I.P.C., Vaccination Act, 1880, Cattle Trespass Act, 1871, the H.P. Juveniles (Prevention of smoking) Act, 1952 and the Public Gambling Act, 1867 and also to hear and decide applications for maintenance under section 125 of the Cr. P.C.</p> <p>Aims of the Study</p> <ol style="list-style-type: none"> 1. To study the importance of the local governments and ways to give them independent powers 1. To know the importance of local government bodies in local development 2. To analyze the provisions made by the 73rd and 74th Constitutional Amendments 3. To highlight the functions and responsibilities of the local government bodies

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Gandhi's View on Panchayati Raj

Panchayats have been the backbone of the Indian villages since the beginning of recorded history. Gandhiji, the father of the nation, in had aptly remarked that the Indian independence must begin at the bottom and every village ought to be a republic or Panchayat having powers. Very prudently he outlined this vision of the village republic, in the issue of Harijan of 26 July 1942.¹

The basic idea behind Panchayat Raj is to raise a system of village governance as a basic unit of popular democracy. It is true that Gandhi did not present a full-fledged blueprint of village governance, but he visualized its basic parameters

Gandhi thought that village was the representative of real India. In a 1931 speech Gandhi said, "princes will come and princes will go, empires will come and empires will go, but this India living in her villages will remain as it is.

Ambedkar's View

For Ambedkar, Gandhi's vision romanticized the village, though Gandhi had made it amply clear that the village he was talking about was a potentiality - 'a village of my dreams' - and not the existing village life. Ambedkar could not see this potential. For him, the village was the embodiment of repression and no freedom could emanate from there. He is vehement in his opposition to the Gandhi's ideal village:²

It is said that the new Constitution should have been...built upon village Panchayats and district Panchayats...they just want India to contain so many village governments. The love of the intellectual Indian for the village community is of course infinite if not pathetic...I hold that the village republic has been the ruination of India. I am therefore surprised that those who condemn provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the draft Constitution has discarded the village and adopted the individual as the unit.

The 'realistic picture' of village life was very different. For Ambedkar, the governing normative structure of the village was no way close to democracy. The village life was marked by experiences of exclusion, exploitation and untouchability. Not only did the members of upper/dominant castes make the untouchables live outside the village, in the ghetto, the untouchables were also excluded from most of the village festivities. 'When the whole village community was engaged in celebrating a general festivity such as

Holi or Dasara, the untouchables must perform all menial acts which were preliminary to the main observance. These duties had to be performed without remuneration'.³ In his typically polemical style he concluded:⁴

This is the village republic of which the Hindus are so proud. What is the position of the untouchables in this Republic? They are not merely the last but are also the least...in this Republic there is no place for democracy. There is no room for quality. There is no room for liberty and there is no room for fraternity. The Indian village is a very negation of Republic. The republic is an Empire of the Hindus over the untouchables. It is a kind of colonialism of the Hindus designed to exploit the untouchables. The untouchables have no rights...They have no rights because they are outside the village republic and because they are outside the so-called villager public, they are outside the Hindu fold.

Gandhi and Ambedkar had completely different social and political outlooks. Gandhi came from upper caste whereas Ambedkar came from the oppressed caste. Their upbringing and learning were quite different from one another. It would not be wrong to say that their personal experiences influenced their thinking. They both had revolutionary ideas in their minds but the methods that they adopted to realize these ideas were very different. Gandhi advocated a fair deal for the rural people and sought their welfare without any exploitation from external forces—urban or foreign producers. When he was questioned, "Is the economic law that man must buy in the best and cheapest market wrong?" Gandhi answered: "It is one of the most inhuman among the maxims laid down by modern economists."⁵

Constituent Assembly Debates

Some debates took place inside the Constituent Assembly for the incorporation of Panchayati Raj in independent India. The debates envisaged an overall view of the Founding Fathers of our constitution about the Panchayati Raj. The honorable members of the Constituent Assembly argued for and against the system. Dr. Ambedkar, Chairman of the Drafting Committee, made some observations about the condition of village in his introductory speech on November 4, 1948 in the Constituent Assembly for the consideration of Draft constitution. His observation about Indian villages aroused a lot of criticisms among the other members. The relevant extracts of the speeches are mentioned below:

According to Dr. B. R. Ambedkar, the village community had little role in the affairs and the destiny of the country in the past though it survived for long time.

There are others who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many village Governments. The love of the intellectual Indian for the village community is of course infinite if not pathetic. It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations.

The question is on what plane they have survived. The answer is surely on a low on a selfish level. I hold that the village republic have been the ruination of India. I am therefore surprised that those who condemn provincialism and communalism should come forward as champion of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft constitution has discarded the village and adopted the individual as its unit.

So, Ambedkar accepts the draft constitution since it lays importance on individual rather than village community. Just favoring the Draft constitution, Pandit Bal Krishna Sharma has extended his support to it. Moreover he admits that the constitution does not contain any clause favoring local self-government.⁶

Opposing the views of both, Ambedkar and Balkrishna, H. V. Kamath has reminded us of our old golden past in the following lines:

The Constitution does not put any obstruction what-so-ever in the path of the development of those units of local self-government which will enjoy power for managing their own affairs....He wants to know what position is held by villagers, labourers, farmers, and local self-government in this Constitution. I would like to submit humbly that if he will take the trouble of studying the whole of the Constitution carefully, he would come to know that even today in the making of this Constitution, we are not

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ignoring that sacred inspiration of Mahatma Gandhi which led him to give us a message that India does not consist of cities but of seven lakhs of villages...

Dr. Monomohan Das has expressed his grave concern about the omission of the village Panchayat system from the Draft constitution. His suggestion is to educate the village folk first and only then the village Panchayat system can be proved effective to the village folk. In fact, education can make the village folk conscious of their rights and privileges. If the village people were not aware of their rights and privileges, the establishment of Panchayati Raj system will enable the village Zamindars, the village Talukdars, the Mahajons and the Money-lending classes to rob, to exploit the less cultured, the less educated poorer classes of the villages.⁷ It seems that Sri M.M.Das accedes to the Draft Constitution presented by Dr. Ambedkar.

Thus the debate held in the Constituent Assembly envisaged that Article 40 was not originally included in the Draft Constitution which was considered in November, 1948. There were a lot of debates among the members of the Constituent Assembly for the neglect of the Panchayati Raj in the draft constitution. As a result, an amendment on November 22, 1948 moved by K. Santhanam for addition of a new article in the following: - "that after article 31, the following new Article be added 31- A. The State shall take step to organize village Panchayats, and endow them with such power and authority as may be necessary to enable them to function as units of self-governments".⁸

Constitutional Provisions

Based on the recommendations of the Balvantrai Mehta Committee, Panchayati Raj was launched on October 2, 1959, (Father of the Nation Mahatma Gandhi's birthday) in Nagaur district in Rajasthan State. In the same year Andhra Pradesh State also introduced the system. Soon after, many States established Panchayati Raj Institutions (PRIs). However, the enthusiasm with which these institutions were created could not be sustained. In the mid-1960s the Union Government at New Delhi almost setting aside the local bodies created a district programme, namely Integrated Rural Development Programme (IRDP). To meet the crisis in the agriculture, national level programmes like Small Farmers Development Agency (SFDA), Drought Prone Areas Programme (DPAP) and Integrated Tribal Development Agency (ITDA) were introduced. Gradually the concept of local development was withdrawn from the official agenda.⁹

Article 40 of the original Constitution provided for a Directive to the government to take steps to organize village Panchayats and endow them with the powers and authority as may be necessary to enable them to function as the units of

self-government. But, by mid-eighties it was realized that the said Directive was not sufficient to institutionalize Panchayati Raj in India

73rd and 74th Constitutional Amendments were passed by Parliament in December, 1992. Through these amendments local self-governance was introduced in rural and urban India. The Acts came into force as the Constitution (73rd Amendment) Act, 1992 on April 24, 1993 and the Constitution (74th Amendment) Act, 1992 on June 1, 1993. These amendments added two new parts to the Constitution, namely, 73rd Amendment added Part IX titled "The Panchayats" and 74th Amendment added Part IXA titled "The Municipalities". The Local bodies—'Panchayats' and 'Municipalities' could come under Part IX and IXA of the Constitution after 43 years of independence.

Salient Features of the 73rd and 74th Constitution Amendment Acts:¹⁰

1. Basic units of democratic system—Gram Sabhas (villages) and Ward Committees (Municipalities) comprising all the adult members registered as voters.
2. Three-tier system of Panchayats at village, intermediate block/taluk/mandal and district levels except in States with population is below 20 lakhs (Article 243B).
3. Seats at all levels to be filled by direct elections [Article 243C (2)].
4. Seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) and chairpersons of the Panchayats at all levels also shall be reserved for SCs and STs in proportion to their population.
5. One-third of the total number of seats to be reserved for women. One third of the seats reserved for SCs and STs also reserved for women. One-third offices of chairpersons at all levels reserved for women (Article 243D).
6. Uniform five year term and elections to constitute new bodies to be completed before the expiry of the term (Article 243E).
7. Independent Election Commission in each State for superintendence, direction and control of the electoral rolls (Article 243K).
8. Panchayats to prepare plans for economic development and social justice in respect of subjects as devolved by law to the various levels of Panchayats including the subjects as illustrated in Eleventh Schedule (Article 243G).
9. 74th Amendment provides for a District Planning Committee to consolidate the plans prepared by Panchayats and Municipalities (Article 243ZD).
10. Funds: Budgetary allocation from State Governments, share of revenue of certain taxes, collection and retention of the revenue it raises, Central Government programmes and grants, Union Finance Commission grants (Article 243H).
11. Establish a Finance Commission in each State to determine the principles on the basis of which

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adequate financial resources would be ensured for Panchayats and municipalities (Article 243I).

Other Important Provisions of Part IX of the Constitution

Part IX contains Article 243 and Articles 243A to 243-O. Article 243 relating to definitions has defined various terms. Under Article 243A, a Gram Sabha is empowered to exercise such powers and perform such functions at the village level as provided by law. As per Article 243C, the Legislature of a State is empowered to make provisions with regard to composition of Panchayats. The Panchayat area shall be divided into territorial constituencies. The State is empowered to provide for the representation of the chairpersons of the Gram Panchayats, at the village level, the intermediate level or, in the Panchayats at the district level; and MPs of LS/ RS, and MLAs/MLCs at a level other than the village level in such Panchayat; where they are registered as electors in Panchayat at the intermediate level and in Panchayat at the district level. The chairperson of a Gram Panchayat shall be elected in such manner as provided by law, and of a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members. Under article 243J, the Legislature of a State is empowered to make provisions with respect to the maintenance and auditing of accounts of the Panchayats. Article 243L provides that the provisions of the Part IX shall apply to the Union territories. Under Article 243O, the Courts are barred from interfering in electoral matters such as the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies. No election to any Panchayat can be called in question except by an election petition as provided under any law made by the Legislature of a State. Article 243M (1) provides that this Part shall apply to the Scheduled Areas referred to in clause (1) and the tribal areas referred to in clause (2) of Article 244. (2) This Part shall apply to (a) the States of Nagaland, Meghalaya and Mizoram; (b) the hill areas in the State of Manipur for which District Councils exist under any law for the time being in force. (3) Nothing in this Part (a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force; (b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law. Nothing in article 243D, relating to reservation of seats for the Scheduled Castes, shall apply to the State of Arunachal Pradesh (83rd Amendment, September 08, 2000). (4) However, the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of

the members of that House present and voting; Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368. As required under Part IX of the Constitution, all the States and UTs have enacted/amended their Panchayati Raj Acts incorporating the provisions of Part IX.

Conclusion

Consequent to the 73rd Constitution Amendment Act political decentralization has taken place in almost all the States where elections have been held. However, progress on fiscal and functional decentralization has been mixed. There are States which have taken steps to devolve funds, functions and functionaries to the PRIs. The process of devolution is at different levels of operationalisation across States. Surprisingly, the States of Kerala, Madhya Pradesh and Uttar Pradesh who have had little experience of decentralization, have made the most fundamental changes in this regard. Further, it is imperative that the PRIs have resources to match the responsibilities placed on them. While State Finance Commissions have submitted their recommendations, very few States have taken the necessary steps to ensure fiscal viability of the PRIs. Yet, one can be hopeful that the experience of some States and some PRIs within States would provide the necessary impetus for greater devolution in other parts of the country.

The above functions can be effective and meaningful only after a model plan of development of the village is before the Gram Sabha. Such development plan should be based upon economic requirements of the village for the villagers, through use of locally available resources, necessity of

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augmenting such resources (physical and financial) and methods through which the end result of task of socio-economic development can be achieved. Preparation of model development plan for villages is basically to help the villages/Gram Sabha in accomplishing the target of development of the socio-economic conditions of the village. It is the most necessary vital tool in empowering Gram Sabhas to discharge their functions effectively and efficiently.

Endnotes

1. As quoted in Peter Ronald DeSouza, "Decentralization and Local Government: The 'Second Wind' of Democracy in India," in Zoya Hasan, E. Sridharan and R. Sudarshan (eds.), *India's Living Constitution: Ideas, Practices, Controversies* 372 (Permanent Block, Delhi 2002).
2. *Supra* note 1 at 6-7.
3. V. Moon, "Untouchables or the Children of India's Ghetto" in *Dr Babasaheb Ambedkar Writings and Speeches* 22 (Volume 5, Government of Maharashtra, Bombay, 1989).
4. *Id* at 25-26; see also Surinder S. Jodhka, "Nation and Village Images of Rural India in Gandhi, Nehru and Ambedkar" Vol. 37(32), *Economic and political weekly* 3351 (August 10, 2002).
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6. *Id* at 275.
7. *Id* at 307-308.
8. *Id* at 520-527.
9. A. Hariprasad, "Panchayati Raj System and Democratic Decentralizations in India"; available at http://paperroom.ipsa.org/papers/paper_50014.pdf; accessed on 20-01-2018.