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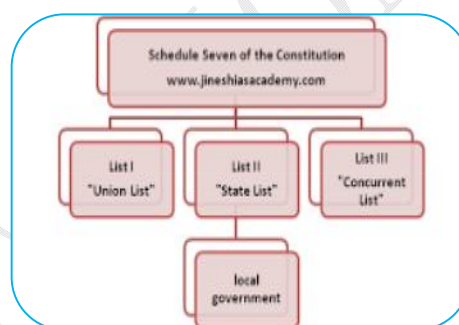
## 73<sup>RD</sup> CONSTITUTIONAL AMENDMENT : EMERGING TRENDS AND CHALLENGES

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### ABSTRACT:

*This paper seeks to examine the functional aspects of Panchayati Raj Institutions, especially in the aftermath of the 73<sup>rd</sup> constitutional Amendment. After a brief review of the history of local self government in the pre - and post independence India, an attempt is made to figure out the present system of the panchayat governance in India. The 73<sup>rd</sup> amendment give recognition and protection to local governments. It mainly aims to protect the poorer section of people from exploitation by making Gram Sabhas centers of self governance. It is the most progressive legislation for recognizing the traditional rights of the indigenous communities over the natural resources. It makes provisions for the reservation of seats at all the three levels in favor of women, the schedule castes, the schedule tribes and the other backward classes. This paper argues that despite the constitutional amendment to regenerate the PRIs there is still lack of genuine and strong political interest and bureaucratic support to fuel the institutions. The traditional factors rooted in the socio-economic structure and political dynamics of the rural society continue to plague the working of these democratic institutions. It has been contended that there is need for another round of constitutional amendment coupled with continuous political and administrative support to ensure steady growth of the PRIs. The rise of civil society organizations which have started acting as watchdogs in some of the states. They are working not only for generating awareness among the stakeholders but also for organizing the villagers to assert their rights and in this respect the right to information has come as great soon.*



**KEYWORDS:** Panchayati Raj, Local government, Gram Sabha, Reservation, Civil Society, Watchdog, Right to Information.

### INTRODUCTION

In India, village Panchayats have been traditional institutions of local governance and community level dispute resolution based on social consensus. Their decline and superimposition of costly formal courts led to realization of their important role and,

therefore, efforts were started for their formal, statutory revival in colonial period itself. In independent India, the directive principles of state policy in Article 40 of the Constitution exhorted the states to 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. The three decades of nineteen fifties to nineteen eighties saw phases of revival and neglect of these vital grass-roots institutions of local governance with heavy social and political costs for the rural areas. The patchy progress of

development initiatives, lack of people's participation and support led to realization of the need to deepen democracy and develop inclusive and capable institutions of local governance.

The 73rd Constitutional Amendment in 1992 adding Part IX to the Constitution for mandating vibrant Panchayat institutions drew upon the efforts made by different states to organize Panchayats in the four decades since the Constitution became effective. It sought to include essential features for their continuous existence with more inclusive membership and with adequate powers and resources. It also included a complete three-tier Panchayati Raj structure instead of village Panchayats only as initially expected in Article 40 as an essential uniform structure for the whole country. Even with these features included in the Constitution itself by this Amendment the subject of Panchayats still continues to be within the competence of the states. Hence, a jumber of steps to implement these provisions had to be finally fashioned by the state legislatures while bringing their Panchayat legislations in conformity with this Amendment.

### THE MAIN FEATURES OF THE AMENDMENT

The essential core features of the Amendment are related to the mandated composition, election, life, powers, resources and the autonomy of Panchayats as institutions of self-government. These can be summarized as follows to enable us to test the actions taken in the states :

#### (1) Composition and regular elections

(a) Three-tier Panchayat structure throughout the rural areas of all the states except those to which Article 243-M gives exemption but with future expectation of action by Parliament and/or legislatures of those states for its application. A two-tier structure in smaller states with population up to two lakhs.

(b) Fixed five years' tenure for all Panchayats and their office bearers with no powers to extend this period as was being done earlier by the state governments extending the period for one reason or the other and thereby avoiding/delaying regular elections.

(c) Elections to all Panchayats by independent State Election Commissions to be set up by the states.

(d) All Panchayat memberships to be by direct election from territorial constituencies of the Panchayat area i.e. no nominations or cooptions etc. The only exception given for ex-officio membership of MPs/MLAs and to presidents of lower tier Panchayats in the higher level Panchayat bodies.

(e) For chairpersons, the state Panchayat legislations can provide for election of chairpersons of the village Panchayats directly by all voters or indirectly by the members of the Panchayats but chairpersons of the district level and intermediate level Panchayats are to be elected by their members only.

(f) Reservations for weaker sections of SC/ST and for women in the membership as well as in the chairpersons' posts - for SC/ST proportionate to their population and for women not less than one-third of the members/chairpersons posts. Women's minimum one-third reservation to be not only in total seats of a Panchayat or total number of chairpersons at a level but also among those reserved for SC/ST separately. With the 1996 law, all chairpersons to Panchayats in Schedule V Areas have to be tribals and their members to have fifty per cent tribal members.

(2) Devolution of powers and functions to enable Panchayats to function as institutions of self-government (more than only units of self-government expected in Article 40 earlier) and to prepare plans and implement schemes for economic development and social justice including but not limiting to the items listed in Schedule XI added with this Amendment. The 1996 law mandates extensive powers over the natural resources, social sector institutions, etc.

(3) A mandatory Gram Sabha, a body of all voters of the village with functions as may be prescribed, with village defined as the area for which a village Panchayat is to be constituted.

(4) Recognition of Panchayats as self-governing institutions with domain without interference, control and encroachment.

(5) Financial Resources to Panchayats for the functions and responsibilities entrusted to them and including the institutional mechanisms of State Finance Commission to be set up in every state every five years and the role of the Central Finance Commission for recommending resources transfer to Panchayati Raj Institutions.

(6) District Planning Committee in each district for the purpose of collating the plans prepared by the Panchayats and municipalities and giving them to the state government for action.

The law also provides that no meeting of the committee can take place if it does not have the quorum. A review of the recent reports of the Gram Sabha meetings for Gram Swaraj and constitution of standing committees and of setting up of Gram Kosh shows that even by the end of the year 2001-2002, these standing committees have been constituted in 76 per cent places and Gram Kosh set up in 57 per cent of the places. In some districts, particularly in the western region, like Ujjain, Mandsaur, Shajapur, Rajgarh, Bhind (32 per cent) and Rewa, only 35 per cent to 38 per cent Gram Sabhas had constituted these committees. In a number of places where the Sarpanch is from the reserved category or a woman, the treasurer and other chairpersons are mainly men from non-reserved category.

By now the M.P experiment of Gram Swaraj, started in 2000, has shown some of the expected implications. In a number of villages, there were conflicts and clashes in the elections to these bodies particularly of the treasurer who has the authority in utilisation of all the funds given to the Gram Panchayat but who is outside the Gram Panchayat and has no responsibility for the progress of works etc. in the Gram Panchayat area. So he becomes the counter-force to the village Panchayat Sarpanch who is duly elected by the whole of the Panchayat area, which may have one or more villages. An interesting implication of this experiment is that while the 1996 law extending Panchayat provisions to the Schedule V Areas mandated that all heads of village Panchayats, block Panchayats and district Panchayats have to be tribals, these bodies need not have only tribals and therefore in a number of cases while the village Panchayat head is a tribal man or a tribal woman, these bodies are headed by non-tribal men thereby effectively bringing persons in position who were out due to the 1996 law and/or by the reservations for STs and for women.

The experiment is ostensibly made for increasing the authority and primacy of the Gram Sabha. The committees are supposed to be elected by the Gram Sabha but they effectively undermine any authority and work to be done by the Gram Panchayat. The funds given to the Gram Panchayats by the central or state government or coming from their own resources have to be given to these committees which have been made for specific subjects like education, social justice, construction, etc. The chairpersons of these committees are to be elected every year and hence ensure that neither Panchayat leadership nor the leadership in these committees have any chance of developing or showing their performance.

### EMERGING TRENDS AND CHALLENGES

In most of the state Panchayat laws, the state government can cancel or suspend any resolution of the panchayat at any level if, in its opinion, any such resolution abuses the provisions of any Act. The government also has powers to dissolve Panchayats and dismiss PRI heads at all the three levels. Thus, the state Panchayat Acts give considerable powers to the government to control the Panchayati Raj bodies. Besides, the state Panchayat laws seem to place reliance more on the executive officers than the political heads of the panchayat bodies for proper functioning of the latter.

The XI Schedule added by the 73rd Amendment was to serve as a guide, so that the respective state legislatures could decide which among the different functions or sub-functions of the subjects listed in this Schedule could be statutorily transferred to the PRIs. Once such transfer was made, the PRIs would have absolute authority to deal with them without reference to the state government. In other words, the Constitution intended transfer of authority and responsibility over a set of functions or sub-functions from the state government to the PRIs. Such transfer implies that both financial and administrative resources necessary for discharge of the transferred functions should also be devolved to the Panchayats. But there is a contradiction in the scheme of the state Acts. It admits that Panchayat is an institution of self-government, but fails to carve out independent jurisdiction for the PRIs, subject to the mandatory provisions of the Constitution in respect of election, structure, reservation of seats and position of chairpersons etc. Conceptually, these institutions remain as before merely statutory authorities without any independent jurisdiction over a set of governmental functions. The State

Panchayat Acts seem to have no idea of devolution instead of decentralisation, which is intended by the Constitution.

Thus, the post-73rd Amendment evolution of the Panchayati Raj institutions in the states so far deviates from the vision of this Amendment as much as they continue to be conceived not as institutions of self-government but as implementing subordinate agencies of the state government. Hence, decentralisation that has taken place in the states has, by and large, been in the nature of deconcentration of government's activities and not devolution of authority and functions. The conformity Acts in the wake of the Amendment to meet its mandatory requirements of the states did not alter the character of Panchayats in terms of Article 243 G read with the XI Schedule. In practice also, they did little to reduce the agency functions of Panchayats and expand their autonomous jurisdiction. The Panchayats have continued to function as the implementing agencies for the state government's schemes most of which are centrally-sponsored poverty alleviation schemes. Untied funding for Panchayats is practically an unknown concept to most of the state governments. In fact, even the "untied funds" earlier made available in some of the states to the district planning boards under the Planning Commission's insistence for district level planning have been withdrawn for making them available as discretionary funds to ministers and members of state legislative assemblies. This is one of the major reasons why no Panchayat even in West Bengal fulfils the constitutional mandate of preparing area plans for economic development and social justice, even though the State Panchayat Act confers this responsibility on them.

Lack of clarity about the role of Panchayats as envisioned in the 73rd Amendment becomes pronounced when one sees parallel institutions set up in areas which legitimately belong to the Panchayati Raj institutions. Even though primary education is a subject listed in the XI Schedule, the Panchayats have not been allowed to retain any control over the mainstream primary education system even in West Bengal where a separate institution called District Primary Education Council has been created to run the primary schools.

Our brief overview of the action taken to implement the mandate of the 73rd Amendment and the 1996 law extending Panchayat provisions to the Schedule V areas shows that while mandatory provisions have been complied with, there are still some deviations primarily from the spirit of these enactments but also some from the letter of the enactments too which need to be corrected without waiting for litigation and court decisions. Most important are the deviations from the spirit of these amendments. The development programmes and funds for rural areas need to be squarely entrusted to the Panchayat institutions for planning and implementation according to local aspirations and requirements. The increasing practice of creating parallel structures for implementation of development programmes and for people's participation must be stopped and any new mechanisms should be created only within the structure of the Panchayats at the three levels and not outside even if ostensibly created in the name of Gram Sabha or people's participation. Any problems in the working of the Panchayats need to be corrected by appropriate training, exposure and orientation, instead of countering them by external outside structures and institutions.

Special chapters seen in most of the state Panchayat laws which provide for control and other provisions which give extensive powers to the state government to supersede panchayat institutions and to take action against their elected representatives should be changed as these are really continuation of the conception of Panchayats in the colonial period when the Panchayats were created from the top, were quite often optional institutions and were to be strictly controlled. Any control should be through independent institutions and authorities like the State Election Commission or new authorities which can be evolved as tribunals or commissions and not with the state governments and their subordinate authorities so that requisite corrective steps are taken where necessary without being influenced by the state politics.

At present, the Central and State Government grants are given to Panchayats with specific conditions and guidelines. These are all tied grants giving no space for Panchayats to use these grants based on the locally identified needs of the Gram Sabha area. This needs to be changed and most of the funds should be given as untied funds. Funds allotted to Members of Parliament and Members of the

Legislative Assembly should be used only as part of the planning process from below by the district Panchayats and Panchayats at the village and intermediate levels.

It would be desirable for Local Self-Government Institutions to have their own officers and staff. They should have powers of appointment, transfer and disciplinary action about their staff, especially in regard to institutions catering to the fulfilment of basic needs in the villages. The control and decision on usage and regeneration with regard to all common lands and natural resources/common property resources and waterbodies should be vested with the village Panchayats. Every village Panchayat should mandatorily maintain village maps, details of the village common resources, etc. All recommendations with regard to reclassification of village maps and land-use management and changes in uses of common property resources, natural, resources, etc., must be entrusted with Panchayats after adoption by the Gram Sabha.

Constitution of a State Development Council of Panchayat Institutions in each state will be useful to propose and deliberate on policy directions and evaluate the functioning of rural local government bodies. It should meet at least twice a year. To sum up. If we look at the omissions and deficiencies in implementation of the provisions of 73rd Amendment, we see that there has been a more mechanical compliance than a display of real commitment to give power to people's institutions at the grassroots. There is an unspoken lack of confidence in the abilities of the local people to handle their affairs. There is reluctance to leave space to people to learn from their initial mistakes and to become stronger in addressing their local needs with resources and powers available with them. Another aspect is competition between different levels of the polity to keep control and power over allocation of resources for addressing different needs. This accounts for the trend to seek discretionary funds for individual elected persons at different levels, instead of working through the statutorily mandated and elected institutions with participation and negotiation of all concerned so that priorities for use of resources for different needs can be decided collectively. In a way, it is also a carryover of feudal and patriarchal mindset which does not permit the earlier marginalized groups and women to be in decision-making roles despite the constitutional mandate and everyone at least speaking in support of decentralization, grassroots democracy, people's participation, etc. Hence, we find that the legislative and executive action taken in even in those states who swear by their commitment to decentralization, devolution and Gandhi's Gram Swaraj falls short of the real philosophy of the 73rd Amendment. The measures like two child norm, parallel committees and structures outside the constitutionally mandated Gram Panchayats have already shown their adverse, unequal impact on women and weaker sections and assertion and power of those who were to give way to share political power at the grassroots with the earlier politico-socially marginalized groups. Grassroots democracy needs content of responsibilities, resources and powers and a reasonable continuity and guarantee in exercise of those powers to show any impact. It is time to act to strengthen the PRIs and for effective inclusion and participation of these sections to meet the expectations and intent of the historic Amendment of 1992 by countering practices consciously or unintentionally influenced by feudal and patriarchal powers.

### CONCLUSION :

Despite the positive like enactment of Panchayati Raj Act, setting up of Election Commission and State Finance Commission and holding of regular Panchayat elections providing reservation for SC / STs / Women in Panchayats, the Panchayati Raj System has not been properly successfully working. Gram Sabhas have not been empowered and strengthened to ensure greater people's participation and transparency in functioning of Panchayats as envisaged in the Panchayat Act; Recommendation of State Finance Commission are generally not taken seriously; Powers given to the State Election Commission also vary from State to State etc.

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