

PANCHAYATI RAJ INSTITUTION: STEP
TOWARDS GOOD GOVERNANCE BY MR. KARN
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Introduction

It is evident from our ancient scriptures that from centuries there have been in existence a culture of village communities in India which is known to be an intrinsic part of Indian culture. Rig Veda evidences that the presence of system of Local Self Governance is not new in India rather they were in existence since 1200 BC as 'sabhas'. Such references are not limited to Vedas but can also be seen in Arthshastra, Manusmriti etc. This concept of Local Self Governance remained functional even after conquests of Muslims and Britishers and with passage of time these self governing bodies emerged as Panchayats (council of five persons). These Panchayats or council of five persons known as Panchas was equated with God (*parameshawara*). It was believed that God himself spoke through these Panchas. This belief kept sustained the institution through ages and even till today despite of all the politicking and deceit in India. During ancient times, there were two kinds of Panchayats, one was Village Panchayats and the other was caste Panchayats. While the former focused on providing grass root governance in almost every village, the latter was set up to check if persons of particular caste adhered to their code of social conduct and ethics. From the existence of these caste Panchayats we can infer the existence of professional panchayats also as during the medieval period, caste by and large had become occupational. Thus, we can see Panchayats were elevated to a sacred position of authority by customs and religion. But, the British Rule led to the decline of Panchayati Raj as the autonomy of Panchayats gradually disappeared with the establishment of various courts and organizations along with operation of the individual *Ryotwari* system as against the *Mahalwari* or village tenure system. Due to the adoption of policy of centralization, the panchayats suffered a temporary setback but soon the British realized importance of this institution and recommended the Decentralization Commission in its report in 1907. But the Government of India did not pay any heed to these recommendations. Later, in 1920's Mahatma Gandhi made a strong plea for Village Swaraj and strengthening the village panchayats to the fullest level but on the other hand Dr. Ambedkar was opposed to this idea and as result of which the Panchayati Raj Institutions were placed in the non-justiciable part of the Constitution, the Directive Principles of State Policy as Article 40. This was one of the serious drawbacks in the drafting of Indian Constitution. The Constitutional (73rd Amendment) Act was passed with an object to provide constitutional sanction to establish democracy at grass root level as it is at the state level or national level. Now, Panchayats has emerged as an institute for providing grass root governance thereby promoting democracy as it strengthens the social base for democratic decision making and facilitates a people centered process of change and development. Here, the people are organized into a system of self-governance whereby they elect their own representatives according to the principles of democracy. These elected representatives on the

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other hand work for the development of their area and encourage the participation of people. Today, there are about 3 million elected representatives at all levels of panchayat. These members represent more than 2.4 lakh Gram Panchayats, about 6,000 intermediate level tiers and more than 500 district panchayats¹. This is the largest experiment in decentralization of governance in the history of humanity. Panchayat elections plays an important role in development of grass-root level of the nation as these representatives decide the system of governance at such level. Hence the system of election in these self governing bodies is a step towards good governance. They provide space for people's initiatives, to elect a person of their choice who would strive to fulfill their needs and interests. In theory, understanding the significance of elections of these bodies which is a result of recommendations of committees and amendment ensures awareness and transparency but things are different in practice. This article aims to deal with the process of election of panchayats. It would also look into the initiatives taken by government and individuals in bringing awareness regarding free and fair elections of Panchayats among local people. It also highlights certain concerns which needs to be reviewed and provides recommendations for the same.

Constitutional Provision

Part IX was added to the constitution by the constitution (73rd amendment) act, 1992 popularly known as Panchayati raj act. This amendment provides constitutional sanction to the democracy prevailing at grass root level.

The Panchayati raj bills were introduced in the Lok Sabha for the first time by Rajiv Gandhi government in 1989, but it failed to get support of requisite majority in the Rajya Sabha. Apart from this many states had also objections over the certain provision of old bills and according to them there was direct encroachment on their autonomy through the measures. The bills were referred to the select committee and after certain modifications they were introduced in Lok Sabha and finally passed on 23rd December, 1992. The passing of Panchayati Raj amendment is in accordance with directives envisaged in Art. 40 of the constitution which enjoins the state to take steps to organize village panchayat and endow them with such powers and authority as may be necessary to enable them to function as unit of self government. On 24th March 1993, the Panchayati Raj act came into force with the enactment of new legislation and ratification of the act by more than 50 per cent of the state and union territories.²

Panchayati Raj Elections: Step Towards Good Governance

Governance for the last 60 odd years, has specifically adopted a top-down approach, due to which there is no transparency and accountability exists in the system. This resulted in avoidance of people participation. The problem of alienation of people at grass root level can be challenged head on, in participatory, democratic foray, rather than representative ones.

The lack of awareness of the functions which are performed by Panchayati Raj Institutions (PRIs), lack of role clarity, inadequate funds and gender bias acts as large hurdle to the achievement of democracy in the true sense. The need of the hour is to make people aware about their rights and about the importance of participation. With the enactment of 73rd

¹ Finance Commission Report (11th Ed Government of India 2000).

² Pandey, J.N, The Constitutional Law of India, 653 (50th edition, Central Law Agency, Allahabad)

(Constitution Amendment) Act, 1992, panchayats received constitutional recognition through which it has become reality from cultural norm. Within the Act were incorporated certain mandatory rules to secure people's participation (both women and men) in election.

Article 243 D - "One third of the seats are to be reserved for women and persons belonging to schedule castes and tribe in the PRI at different level

Article 243 E - "Duration of panchayat is five years from the date appointed."

Article 243 K³ prescribes the provisions relating to election of panchayats.

Hence, we can say elections to these grass root level bodies of governance are a stepping stone in the direction of good governance. They provide opportunities to the people so that they can take initiatives to elect a person of their choice, which would represent them and strive for them to fulfill their needs.

Irregularities in Elections:

a. Time period in which elections needs to be held

The Article 243 E⁴ of the 73rd Constitutional Amendment has made elections to the Panchayat mandatory after every five years. The language that every Panchayat "continue for five years from the date of its first meeting and no longer" is specified in the Article.

It is very clear and unambiguous and there is no scope for any other possible interpretation that could be given to these lines. Any executive action deferring these elections violates the Constitutional provision. While "supervening difficulties" like natural calamities have of course been accepted, as reasonable justification for postponing elections in the past, such reasons cannot be revoked without sufficient justification. But in the past several states have postponed elections for reason other than "supervening difficulties".

In **Prof. B.K. Chandrasekhar and others vs. the State of Karnataka**⁵, a Division Bench of Karnataka High Court declared that article-243G of the Constitution is 'mandatory and not directory.

In **State Election Commission vs. State of Andhra Pradesh**⁶, W.P. No. 2481 of 2000, the High Court of Andhra Pradesh also gave similar view. Validity of AP Mandal Parishads and

³ Elections to the Panchayats

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine: Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1)

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats

Article 243 E- "Duration of panchayat's etc- (1) every panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer

⁵ Prof. B.K. Chandrasekhar and others vs. the State of Karnataka , AIR 1999 Kant 461

Zilla Parishads (transitional arrangement) ordinance, 2000 (Ordinance 3 of 2000) was challenged, which was issued to postpone the elections from being held before the expiry of the term. Ordinance was struck down by the Court. Finally the Supreme Court in its unreported judgement dated 12 August 1997, in WP (Civil) No, 719 of 1995 observed as follows:

“It is necessary to emphasize that various clauses of Art.243 are to be followed in letter and spirit. The concerned States cannot be permitted to withhold election of Panchayats except in case of *genuine supervening difficulties*, e.g., unforeseen natural calamities in the State like flood, earthquake, etc., or urgent situation prevailing in the State for which election of the Panchayat cannot be held in time. It will be unfortunate if the concerned States remain insensitive to the Constitutional mandate of holding election of Panchayats in time.”

Thus, the only valid ground for withholding Panchayat election after it has become due is some ‘supervening difficulty’, but difficulty has to be ‘genuine’ in nature. In no case where the States withheld Panchayat elections during the post-73rd amendment period, the difficulties cited by the States could be considered as ‘genuine.’

There are various instances in which elections were deferred. For instance elections to the panchayat in Bihar, were to be held in 1978. The new Bihar Panchayat Act came into force on August 23, 1993. The chief minister (CM) promised in February 1994 that panchayat elections would be held before April 1994. But by March 1994 it was clear that panchayat polls would be delayed owing to-

- i) re-delimitation,
- ii) Incomplete list of Backward Classes (BCs).

Lack of political will has been the main reason for delay in holding timely elections. As the examples cited above, the Courts had to intervene in these states. Public Interest Litigation and Court order have been an important factor in ensuring elections.⁷

b. Delimitation

Delimitation of Panchayat wards is conducted in several states well before the elections. Yet there are several states in which attempts have been made to use fresh delimitation so that it will be used as an excuse for deferring elections as happened in Karnataka and Kerala in the second round of elections. Delimitation and adjustments on the basis of Population Census and other important factors like geographical contiguity are undertaken in most of the states. It is the sole duty of State Election Commissioner in certain states such as Karnataka, Mumbai.

c. Electoral Rolls

The practice so far has been to use the Assembly rolls and divide them into rolls for the panchayats and the municipal wards. This was because Assembly rolls earlier were the main data for listing voters. This practice reflected a unified approach after all, the voter is the

⁶ State Election Commission vs. State of Andhra Pradesh, 2000 (3) ALD 456

⁷ Centre for policy research, conference on state elections and decentralization, May 2000, New Delhi, Page 5

same and is the basic unit of all rolls. Also, with the increase in population, the wards of the PRIs bodies would undergo periodic adjustment.⁸

In various states, the act is silent regarding the date of publication of the roll, due to which people get very less time to verify any discrepancies, and some of them are not able to participate in the elections. Though State Election Commission (SEC) have played a vital role in removing such conflicts, and they ensures that these changes, adjustments and checking of the electoral list are done prior to the elections to these bodies, so that people would get enough time to see whether any discrepancies exists or not.

d. Reservation and Rotation

Different formula, responsibility and procedures for determining the reservation are used in different states in the country. In West Bengal, Maharashtra and Kerala the SEC has the responsibility whereas in Madhya Pradesh, Rajasthan, Andhra Pradesh and Uttar Pradesh. The responsibility lies with the state government. In Karnataka it was with the SEC before, but recent legislation which itself has been caught up in some controversy, transferred these responsibility to the state officials.⁹

Even for the rotations of reserved seats, different procedures are being followed in different states. For example in some states, it is based on population density, in Kerala and Rajasthan, rotations are based by drawing lots while in Himachal Pradesh it is based on alphabetical system. The term of rotation is of five years.

People's opinion, especially of women on reservation policy is that they believed that five years was too short tenure and they are not able to equip themselves and handle the affairs of the panchayats. They states that by this much of time they only get to understood their roles and responsibility and the functioning of the Panchayati Raj, their seats get deserved. So they are not able to serve for what purpose they have been elected. Hence, they are unable to prove their worth.

e. Candidates, Qualification and Antecedent

The State Election Commissions of the respective states have been provided by the Election Commission of India certain prescribed procedures for the registration of candidates and the allocation of symbols. The states Acts have also prescribed various code of conduct that needs to be followed by the candidates and points of qualification and disqualification of candidates.

The recent inclusion of the "two- child" norm as criteria to contest has become a major issue especially for women living in a rural part, as they have no say whatsoever in the matter of the size of their family.

⁸ The state of Panchayats, a participatory perspective (Samskriti, New Delhi in association with Participatory Research in Asia)

⁹ Centre for policy research, conference on state elections and decentralization, May 2000, New Delhi, Page 7

The 73rd constitutional amendment assured hitherto marginalized and poorly represented groups an opportunity of political representation in local self-government bodies. The introduction of the two-child norm, however, has been double-edged in its implications.¹⁰

Moreover, in rural India, a pattern of early child bearing has been observed across the states, with a total fertility rate being more than four. That means that by the age of 35 years, almost all women are mothers of, as many children as desired by the husbands or in-laws. Thus, this provision keeps women away from contesting the election.

Reason for Low Participation in Election in Panchayati Raj:

- Violence that usually takes place in election process is the major reason for low participation.
- Illiteracy is also one of the major issues, due to which village people do not understand the role of participation in election.
- Low participation of women because of social taboos prevailing in the society, they hesitate to take part in the election process.
- People do not know their rights.
- Marginalized groups are not given chance to participate in the proceedings, hence they are sidelined. Marginalized groups are not given chance to participate in decision making.

In Anokh Singh vs. Punjab State Election Commission¹¹, the primary issues raised in all writ petitions were:-

- i) Whether the office of a Lambardar would be an 'office of profit' so as to disqualify the incumbent of such an office to seek election as Panch of the Gram Panchayat.
- ii) Whether the Anganwari workers employed in the various social-welfare schemes in the State of Punjab held an 'office of profit' and consequently disqualified for seeking election to the Gram Panchayats.

Supreme Court clearly stated that Lambardar would be qualified to contest the elections for legislative assembly. This could be a stepping stone for becoming the Chief Minister of the State. Therefore, it would seem a little incongruous that a Lambardar would not be permitted to seek election to the Panchayat. The village level democracy is the bedrock of the Indian National Democracy. Being a member of Panchayat can be the beginning of a long career in public life. Therefore, the disqualification introduced though the impugned circular could prove disastrous to democracy at the grassroots level in Punjab. But we need not go into controversy, as we have already held that the office of a Lambardar would not be an 'office of profit'.

Held that High Court erred in not analyzing the real and substantive nature of the honorarium and failed to take notice of the fact that the Respondents had placed no material on the record

¹⁰ Nirmala Buch, Law of Two-Child Norm in Panchayats Implications, Consequences and Experiences, 2005 Econ. & Pol. Wkly., June 11, 2005.

¹¹ Anokh Singh vs. Punjab State Election Commission, AIR2011SC230

to establish that the honorarium of Rs. 900/- would result in a net gain to the Lambardar. There was no evidence from which an inference could be drawn that the allowance paid would be in excess of the expenditure incurred in performance of the duties by the Chairman.

In **Aruna Roy v State of Rajasthan**¹², PIL was filed with respect to ordinance passed by governor of Rajasthan, The Ordinances amend the Rajasthan Panchayati Raj Act, 1994 (a statute which operationalizes institutions of local self government in Rajasthan) to include additional disqualifications for contesting for the position of a ‘Panch’ or a member of the Panchayat Raj Institution. These additional disqualifications are: 1) the potential candidate “does not have a functional sanitary toilet in the house and any of his family members defecate in the open”; or 2) the potential candidate has not passed Class V (in case of Sarpanch of a Scheduled Area) or Class VIII (in case of Sarpanch or other areas) or Class X (in case of member of Zila Parishad or Panchayat Samiti).

But the Supreme Court dismissed the petition, and stated that ordinance is fully in compliance with the constitutional provisions.

ISSUES AND SUGGESTIONS

a. Two-child Norm

It has already been discussed in previous chapter, which established that this rule goes against women. Through the empirical study conducted by PRIA it is noted that in the states of Haryana, Madhya Pradesh, Rajasthan and Himachal Pradesh, where this rule has come into force, the average age of women as panchayat members as found to be between 35-40 years. It means that, in majority of the cases, the women aged 35 years and above are potential contestants for PRI elections. In rural India, a pattern of early childbearing has been observed across the states, with total fertility rate being more than four. That means, that by the age of 35, almost all women become mothers of, as many children as (often) desired by their husband and in-laws.¹³

Consequently, a majority of these women, who otherwise are socially eligible to contest PRI elections, get automatically eliminated from contesting election because of the two-child norm. Hence there is strong need to review this two child norm so that women who are able to make change in the society could take part in the election. They could not be deprived of contesting election for this reason.

b. Management of Voters’ List

If proxy voting needs to be curbed, there is strong need to update the voters list at regular interval. Participation of all people would be guaranteed, only if voters list is properly maintained.

The state should ensure that the electoral rolls are ready and made public at least three months prior to the panchayat elections, so that the people have enough time to check for discrepancies, and people would take part in election process.

Dead woman elected Up-sarpanch:

¹² Aruna Roy v State of Rajasthan, WP (C) D No. 1 of 2015

¹³ The state of Panchayats, a participatory perspective, 226 (Samskriti, New Delhi in association with Participatory Research in Asia)

Kuntabai, wife of pooran singh, a resident of Bedakhedi village in sehere district, Madhya Pradesh, passed away about four years ago. He then married Sitabai, but the electoral rolls for the panchayat election were not revised, they continue to show Kuntabai as wife of Pooran singh. Sitabai filed her nomination for the post of representative of ward 7, but as she could not do so by her own name, since her name was not on electoral roll, she presented herself as Kuntabai. After being elected, she also fought for Up-Sarpanch and won.

c. Regularity of Elections

As per article 243E of the Constitution, every panchayat, unless dissolved before time under any law in force at that time, shall continue for five years from the date and no longer. So executive action could not delay or defer PRI elections as it would violate the Constitutional provision. Article 257 of the Constitution gives power to Central government to give directions to states to fulfill their Constitutional obligations. This clearly shows that the Centre too has failed in showing political will to direct states to hold panchayat elections in time.

The issues of revision of electoral rolls and delimitation of constituencies, raised by various state governments to defer panchayat elections, are just what they are, excuses. The revision of electoral rolls and delimitation of constituencies based on population size and geographical continuity can be undertaken regularly and well before panchayat elections are due, as has been done in many states. The States and Central governments have to be alive and sensitive to the constitutional mandate of holding elections to panchayats on time.

d. Presence of Women in management

The presence of women polling staff will effectively increase the participation of women in Panchayati Raj Election as they will provide security for women entering the polling station. They will also benefit not only in explaining the process of where the ballot paper need to be placed but also could be used to check the name with the face. This is because, most of the rural women wear veiled “ghunghats” as a result of which male polling staff hesitates in checking women.

e. Violence, Money and Distribution of Alcohol

Reports of violence have been received from states. Candidates freely distributed pouches of liquor to influence voters. Consumption of low quality country-made hooch distributed by candidates claimed at least 25 lives and blinded six persons in several parts of western Uttar Pradesh. Similar reports have also been received from the state of Kerala. About 4000 trouble-makers were booked under the Goods Act and 546 persons held under the Gangster Act. As many as 2,900 illegal arms more than 6000 cartridges, 140 kilograms of explosives and 115 bombs were recovered in various districts of Uttar Pradesh.¹⁴

To curb this kind of Activities State Election Commission could issues orders of banding the sale or distribution of alcohol. The liquor outlets should be closed during panchayat elections. Constituencies that is prone to violence need to be identified and deemed as sensitive areas. These constituencies should be given maximum security arrangements.

Conclusion

¹⁴ The state of Panchayats, a participatory perspective, 229(Sanskriti, New Delhi in association with Participatory Research in Asia)

Through this article researcher has come to the conclusion that Panchayati Raj Election as a means for Local Self Governance is necessary in a developing country like India, so that people at root level have a chance to participate in the governance through their representatives and a genuine democracy can take its roots. The concept of Panchayati Raj Election, in theory, is a stepping stone towards good governance, as it ensures people's participation at grass root level but in reality the practice of this concept is distant. Governance, in last fifty years has largely adopted an approach which lacked accountability and transparency. This resulted in increase of dependency among people thereby leading way for representative governance rather than participatory. The lack of awareness of Panchayati Raj Institutions, lack of role clarity, inadequate funds and gender biasness has hindered the achievement of 'democratic governance' in true sense. With the enactment of 73rd (Constitutional Amendment) Act, 1992 Panchayats were constitutionally recognized. It introduced some mandatory rules to secure people's participation in electing their representatives. Although this amendment has paved a way for vibrant local government institutions and has also helped panchayats against traditional power structures like patriarchy and casteism but, the Gandhian concept of 'swaraj' is still a distant reality in India. Decentralization of responsibilities has gained momentum but actual decentralization in the form of devolution of finances and various authorities to panchayats is to still gain momentum. Both centre and state government should consider taking necessary steps for strengthening of Gram Sabhas and the three tiers of the Panchayati Raj System. The scope of Gram Sabhas must be clearly defined. Gram Sabhas for every Gram Panchayat provides a political forum to people so that they can meet and discuss local development problems, and understand the needs of the community. Following are some suggestions to have participative and transparent elections for Panchayati Raj Institutions-

- The two children norm criteria should be reviewed as such criteria limit the political space for women.
- It is constantly seen that many states postpone panchayat elections due to excuses like revision of electoral role or delimitation of constituencies. This has led to mistrust and belief that the central government too has failed to demonstrate political will in directing states to hold panchayat elections. The central and state government must be sensitive in holding the elections on time. Stringent measures should be undertaken against states in case they fail to hold elections on time.
- All women above the age of 18 years whether married or not should be registered. The electoral rolls must be published mandatorily and should be made public atleast three months before election so that the issues regarding discrepancies can be resolved.
- State Election Commissioner must identify the areas which are potentially violent and must increase security in these sensitive areas. He should also ensure that all the liquor stores are closed during elections so that it cannot be used to influence the voters.
- Reservation and rotation policy must be looked into.
- The SECs and state governments must work together so as to strengthen the institutions of Local Self Governance.

Recently conducted Panchayati Raj Elections have seen the emergence younger leadership. The educated and enthusiastic elected leaders have paved a path for vibrant institutions. It is my belief that the dream of 'swaraj' can be attained only if Panchayati Raj Institution begin

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to function as institutions of Local Self Governance. They should not and cannot, be allowed to degrade into mere subcontractors of development schemes. They must empower citizens to act with dignity and integrity so as to have a free and fair election process.

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