

## **SELF GOVERNANCE VIS A VIS GOVERNMENT CONTROL**

Shalbha Singh

Assistant professor of law

Career College of law

[singhshalbha16@gmail.com](mailto:singhshalbha16@gmail.com)

9669615187

The Part IX of the Constitution of India adorns the third so called third tier of governance which is called as Panchayati Raj. The spirit of this part of the constitution adheres itself to the ideology that the Panchayats should function as a unit of rural local self-government. The entire emphasis is to empower the Panchayati Raj with particular functions, give them in letter and in spirit, a degree of autonomy and convey to them a sense of self-determination and self-sufficiency. But in practice Panchayati Raj Institutions and the power of local self governance is a myth. The powers given to them are mere virtual powers and the real control still vests with the State government.

The Parliament by passing the 73rd Constitutional Amendment Act in April 1993, endeavored to provide a self governing status to the Panchayati Raj Institutions. It also conveyed through this amendment that the discretionary power, which earlier vested with the State Government was taken away from them. Now all the important issues were directly dealt by the Panchayati Raj Institutions. Before the passing of the landmark 73rd Amendment, originally the Indian constitution via Article 40 narrated only directives to the Government to organize and strengthen the Panchayati Raj institutions but it proved to be in vain. Only then it was realized that are more stronger steps must be taken towards the betterment of the crippling third tier of governance.

Although the Directive Principles of the State Policy enumerated certain provisions for empowering the Panchayati Raj towards self governance but the provisions

weren't enough to entrench Panchayati Raj Institutions as an important part in the mechanism of governance.

Various reasons have been speculated for this. One glaring reason behind it was the non uniformity of the pattern of Panchayati Raj with different state governments. Few states were still in their infancy and were stuck to the two tier system while a few other states had adopted three tier system. Lack of the recognized guidelines to establish these aforesaid institutions were also not found.

The Constitution of India through its Article 243B which relates to the constitution of panchayats is analogous to those of the state legislature. In reality, it wouldn't be wrong to say that the relationship between the state and the panchayati raj institutions is much similar to the relationship between the centre and the state. A remarkable thing though may be noted that the panchayati Raj does not have any legislative powers. However the eleventh schedule of the Indian Constitution provides the list of the matters to be dealt by the Panchayati Raj Institutions.

If the panchayats can take care of its functions independently, without dependence on or interference by the government, it will be called a self-government. But, the reality is different. The development of a nation of the size of India is not possible unless the millions of its citizens actively involve themselves both in the preparation and implementation of plans and schemes meant for the welfare and

progress. However, in all the State Acts on Panchayati Raj, there is a provision for control by the State Government in the following forms:<sup>1</sup>

1. Supervision and control through application of laws
2. Control through local functionaries
3. Control over the decisions of the PRIs by way of suspending resolutions through the Sub-Divisional Magistrate or the District Magistrate or cancelling resolutions at the state level;
4. Control of administrative activities through submission of periodic progress reports, inspections, enquiries, investigation of complaints through officers, power of appeal, review, revision to the government, administrative and technical sanctions, appointment of committee for execution of works if elected representative fail to execute panchayat development works; and
5. Control over finances in the form of sanction of budget, grant-in-aid, loans, matching grants, taxation and audit of accounts of PRIs.

## ELECTIONS

The State Governments is empowered to conduct elections for Panchayats but these elections are often delayed unreasonably on purely political considerations. They can do so, because they retain some powers relating to the conduct of elections under the State Acts/Rules. The State Election Commission (SEC) has to depend upon the State Government for logistic support that includes the staff and finances. Besides, certain important powers like issuance of election notification,

---

<sup>1</sup> Joshi R.P. and Narwani G.S. , "Panchayati Raj in India"

delimitation of constituencies, earmarking of reserved seats, etc. are retained by the State Governments in many states.<sup>2</sup>

243K. 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 grounds 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.

Sometimes, the SECs have to fight long battles against the State Governments to fulfil their constitutional duty hold elections as per the provisions of law.

---

<sup>2</sup> Kashyap, Dr. Subhash, 'Report of the national commission to review the working of the Constitution'; Vol VI

## FUNCTIONAL DOMAIN

Whereas the Article 243 G of the Indian Constitution along with the Eleventh Schedule suggests the matters in which the Panchayati Raj Institutions will have their discretion to discharge the functions independently. But in true sense the functions enumerated there do not fall under the exclusive functional domain of the Panchayati Raj Institutions. There are checks and balances imposed by the State Governments. Hence the dream of self governance for the Panchayati Raj institutions is far-fetched.<sup>3</sup>

Although superficially the states have voluntarily shown interest to promote decentralization their powers and extend it to the Panchayati Raj Institutions but the idea has still not materialized. The aforesaid decentralization has not extended any self governance or exclusive discretion to the Panchayati Raj Institutions. These institutions have become merely a face of the implementation of the various schemes with no limbs of their own.

Furthermore the Article 243G of the Indian Constitution which embellishes the PRIs with the various powers, authority and responsibilities are subjected to their respective State Governments. The article states that, “Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function

---

<sup>3</sup> Kashyap, Dr. Subhash, ‘Report of the national commission to review the working of the Constitution’;Vol VI

as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-

(a) the preparation of plans for economic development and social justice;

(b) the implementation of 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.

## FINANCIAL DOMAIN

It is a pertinent requirement to provide self governance to any institution; the economic self dependence is a must. It is essential for any institution of self government to have consistent and adequate supply of fiscal appendages. The financial domain of the PRI's are still so weak to provide any assistance to the Panchayati Raj setup. They are still a mere puppet in the hands of their state government. For every small need they are subjected to the whims and fancies of their state governments. This can be clearly spotted in the present scheme of the Constitution of India. The following article states that :

Article 243H. Powers to impose taxes by, and Funds of, the Panchayats.-The Legislature of a State may, by law,-

(a) Authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to

such conditions and limits;

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

(d) provide for Constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

The said article donot serve its purpose since some State Government appeal not to share their fiscal powers with the local self-government Institutions.

## PERSONNEL SYSTEM

The recruitment of the staff and the other personnel system in the machinery of Panchayati Raj is still missing. The Constitution of India is completely silent about it. There are no provisions regarding this.

## DISSOLUTION OF PANCHAYATS

The tenure of the Panchayats is also under the whims and fancies of the state governments. Although the duration mentioned in Article 243E of Indian Constitution states that- Duration of Panchayats, 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. Whereas the corresponding provision, namely, clause (1) of the article 243U which relates to the Municipalities cites a certain proviso which provides audi alterem partem to the municipalities before they are being dissolved.

## AUDIT OF ACCOUNTS

There is a considerable lack of accountability of Panchayats because of inadequate provisions in law relating to audit of accounts of public bodies. There is no time frame to conduct the audit of accounts of a given year, submit the audit report or comply with the objections raised in the report.

## PROBLEMS AND ISSUES IN THE PROCESS OF DEMOCRATIC DECENTRALISATION

Following are the issues discussed below<sup>4</sup>:-

### 1. Lack of genuine will to Decentralise

There are half-hearted attempts made at the centre and the State levels to part with their own powers in real earnest, in order to ensure maximum delegation of powers and resources to the Panchayati Raj Institutions. The statutes by the state Government should be so framed as to facilitate the transfer of full powers and that these are actually observed in practice.

### 2. Absence of pressure groups

The exploitation of natural resources, investment in infrastructural development for income generation, technological extension, accessibility and adaptability of delivery systems could benefit the rural poor only if various interest groups get organized as pressure groups overcoming their inherent cultural and historical weakness.

### 3. Exploitation by vested Interest

---

<sup>4</sup> Goel, S.L., 'Good Governance' :Deep and Deep publication



Although the structure of Panchayati Raj had been ostensibly designed for community involvement but in practice it has provided protection to vested interests, thereby accentuating the socio-economic disparities and discontent in the rural areas.

#### 4. Weak base at gram Sabha Level

Any authority or power needs a countervailing force to ensure that it is not misused and that it is accountable. Such a force lends credibility to power. The bureaucracy as well as elected members could be made accountable to the people only if there is a participatory spirit in the beneficiaries who are not merely the receivers of the programme implemented by others.

#### 5. Lack of faith in Decentralisation

The Union and State Governments are passing a number of laws for delegating power to the local level, which the rural masses do not understand. It seems that they are not really convinced.

#### 6. Inadequacy of the 73<sup>rd</sup> Constitutional Amendment

In two crucial areas of local government empowerment, viz. local autonomy and local functions and taxation, the provisions of the 73<sup>rd</sup> Constitutional Amendments are most unsatisfactory.

#### 7. Lack of Fixed Contours of Democratic Decentralization

Decentralization, looked at from a wider angle, acquires a political, constitutional, institutional and psychological significance. At macro-level, a need for uniformity is desirable whereas at micro-levels, random variations

for ensuring adaptability in local environment is indispensable, to achieve desired goals.

## **CONCLUSION AND SUGGESTION**

The new found idea of good governance and India's pledge to imbibe it in its administration is increasing the need of decentralization and people's participation. The statute of the state government should be so framed so as to facilitate the self governing power to the Panchayati Raj Institutions.

By only giving ceremonial powers to these institutions will not make them an important pillar in the mechanism of the Governance. The idea of the Panchayati Raj will be just a dream which can never be materialized.