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The Raj of Panchayats - Cooperating the federalism in India

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Cooperative Federalism is that facet of federalism wherein the central, state, and local governments interact collectively and share their responsibilities in governance under policymaking. Coordination, as well as cooperation, is fundamental amongst them to encourage public welfare, which must be the sayings of elected governments. The 73rd Constitutional Amendment Act, 1992 was enacted to strengthen the spirit of Cooperative Federalism in India, which conferred constitutional status to Panchayati Raj institutions. The system of Panchayati Raj was first introduced during the Mughal rule and suffered during British rule because of the highly centralized administrative system. Indian villages had panchayats having both executive and judicial power from very ancient times. The makers of our Constitution, recognizing the importance of panchayats, included a Gandhian provision under Article 40 of the Constitution. Every Panchayat is governed by respective State governments for e.g., Karnataka Panchayat Raj which is regulated by Karnataka Panchayat Act, 1993. State Governments have exclusive power to interfere in the working and policy making of panchayats. The election of the Panchayats is conducted by the State Election Commission, and interference of the State Government has widened the scope of arbitrary powers vested in them. To curb the arbitrariness to some extent there should be an Independent Constitutional body that conducts, control, and regulate the panchayat raj system in India. This research paper will be a comprehensive analysis on the significance of three-tier government to reinforce the concept of cooperative federalism, the role of Panchayati Raj Institutions for the well-being of weaker sections of the society, conduct of Local Self Government in cooperation with the centre and state, and the need for free and fair panchayat elections.

Keywords: cooperative federalism, local self-government, panchayati raj system.

INTRODUCTION

“India is a beautiful melting pot of diversity. The same is needed to be valued and cherished. And there is no better way to do so than by cooperative Federalism”. The famous words of Justice Nani Palkhivala – *“WHO DIES IF INDIA LIVES AND WHO LIVES IF INDIA DIES.....”*

It is necessary to divide the powers between states and the central government in order to govern a large country like India. Federalism refers to the division of power between states and the central government. Federalism is a concept that has helped in the promotion of the Federal system to act in unison. The most significant feature of the Indian Constitution’s Federal system is that relations between States and the Centre must be based on cooperation. Federalism shows the partnership between the Central and State government in their governance. Other than the Centre and the states, the third tier comprised of Panchayat and municipalities (local government) is also functional. “Cooperative Federalism” is a facet of federalism that reflects the relationship between central, state, and local governments that interacts cooperatively to share their responsibilities, to solve common problems, and to promote public welfare. This impression has been influenced by the emergence of the idea of a welfare state, which is strongly based on public opinion and has made the local governments increasingly reliant on the central governments for adequate resources. This research paper will provide a thorough examination on the significance of three-tier governments to reinforce cooperative federalism, the performance of Local Self Government in cooperation with the centre and state, the Role of Panchayati Raj Institutions for the well-being of weaker sections of society, and the need of free and fair panchayat elections.

COOPERATIVE FEDERALISM IN THE INDIAN DEMOCRATIC SET UP

Mere Federalism is the structural aspect of democracy while Cooperative Federalism is the functional aspect of democracy. *“The Constitution of India is neither purely federal nor unitary, but it is a combination of both,”* writes D.D.Basu. In *S.R.Bommai v Union of India*¹, Justice Ahmadi argued that the core of federation is the distribution of power between the Union and the

¹ *S.R.Bommai v Union of India* AIR 1994, SCC 1918

states. The absence of the terms ‘federal’ or ‘federation’ and the presence of unitary traits like single citizenship, residuary power, can make us believe that the Indian Constitution is more ‘quasi-federal’ than ‘federal’ or ‘unitary’.

CONSTITUTIONAL PROVISIONS

In July 1989, the Rajiv Gandhi Government introduced the 64th Constitutional Amendment Bill in the Lok Sabha to give constitutional status to Panchayati raj institutions and expand their authority and scope. The bill was firmly opposed by the Opposition, which said it sought to strengthen federal centralization. V P Singh, the then Prime Minister, began the process of establishing Panchayati raj institutions in November 1989. In September 1990, a constitutional modification bill was introduced in the Lok Sabha, however, it was withdrawn owing to the fall of the government. Under the leadership of P V Narasimha Rao, the question of constitutionalizing Panchayati raj bodies was re-considered. In September 1991, P V Narasimha Rao reworked the ideas, deleting the contentious portions and proposing a constitutional amendment bill in the Lok Sabha. This bill has later emerged as the 73rd Constitutional Amendment Act, 1992 and it took effect on 24 April 1993.

The *73RD AMENDMENT ACT OF 1992* granted constitutional standing to Panchayati raj institutions in India. Part XI of the Constitution was added as a result of this Act. This section, referred to as “The Panchayats”, is made up of articles 243 to 243 of the Constitution². All the state governments are under the obligation to update their Panchayat Act in compliance with the Constitutional stipulations. Given the lesson learned over the last forty years and the shortcomings that have been identified, it is critical to entrench some core and fundamental elements of Panchayati Raj Institutions in order to ensure their inevitability, constancy, and stability.

² Constitution of India, 1950, art 243

Article 40³ of the Constitution enshrines one of the Directive Principles of State Policy which provides “the state shall take steps to organize village Panchayats and empower them with such powers and authority as may be necessary to enable them to function as units of self-government.”

Eleventh Schedule of the Constitution

The *Eleventh Schedule* was added to the Indian Constitution in 1992 by the 73rd Constitution Amendment Act. It includes the following 29 functional items that are under the purview of panchayats:

- *“Agriculture, including agricultural extension;*
- *Land improvement, implementation of land reforms, land consolidation, and soil conservation;*
- *Minor irrigation, water management, and watershed development;*
- *Animal husbandry, dairying, and poultry;*
- *Fisheries;*
- *Social forestry and farm forestry;*
- *Minor forest produce;*
- *Small-scale industries, including food processing industries;*
- *Khadi, village, and cottage industries;*
- *Rural housing;*
- *Drinking water;*
- *Fuel and fodder;*
- *Roads, culverts, bridges, ferries, waterways, and other means of communication;*
- *Rural electrification, including distribution of electricity;*
- *Non-conventional energy sources;*
- *Poverty alleviation program;*
- *Education, including primary and secondary schools;*
- *Technical training and vocational education;*
- *Adult and non-formal education;*

³ Constitution of India, 1950, art 40

- *Libraries;*
- *Cultural activities;*
- *Markets and fairs;*
- *Health and sanitation including hospitals, primary health centers, and dispensaries;*
- *Family welfare;*
- *Women and child development;*
- *Social welfare, including the welfare of the handicapped and mentally retarded;*
- *The welfare of the weaker sections, and in particular, of the scheduled castes, and the scheduled tribes;*
- *Public distribution system;*
- *Maintenance of community assets."*

Seventh Schedule of the Constitution:

The subject under the State list includes: *"Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities, and other local authorities for the purpose of local self-government or village administration."*

Constitutional Assembly Debates On Panchayati Raj Institution:

Some debates took place inside the Constituent Assembly, which envisages an overview of the Founding fathers of our Constitution in order to incorporate Panchayati Raj in Independent India. Both in favor as well as against the system, the honorable members argued. Dr. B.R. Ambedkar, the chairman of the drafting committee, supported western theories and urged that the new Constitution should be drafted according to the ancient Hindu paradigm, with the centre and state governments replacing village panchayats in Indian governance. Pandit Bal Krishna Sharma, a supporter of the draft constitution, has extended his support. He acknowledged that there is no provision in the constitution that encourages local self-government. Shri T. Prakasam was an outspoken supporter of the Panchayati Raj system in independent India, which would help millions of people. K. Santhanam, meanwhile, has extended his partial support to Dr. Ambedkar's draft Constitution. He thought of inserting

some statutory provisions regarding the village autonomy. The goal was to encourage democratic participation, involve villagers in community development, and lessen the burden at the upper level. He believes that, in the future, local autonomy will serve as the structure for the country's future freedom. Article 40⁴ was not originally included in the Draft Constitution, according to the debate held in the Constituent Assembly. The state shall take steps to organize village panchayats and provide them with the requisite power and authority to function as self-governing bodies.

PANCHAYATS AND COOPERATIVE FEDERALISM

History Of Panchayats

Panchayati Raj, also known as democratic decentralization, was introduced in India by the 73rd Amendment of the Constitution as the third tier of government to re-establish the Panchayati Raj Institution. India's history is rich, ranging from self-sufficient and self-governing village communities that survived the rise and fall of empires to modern administrative organisations backed by Constitutional machinery. It existed in India since the earliest times. We can get plentiful of resources about the Panchayats in Manusmriti, Arthashastra, and the Mahabharata. During the Mughal period, it was autonomous in its own sphere and exercised powers of administrative control, local taxation, justice, and punishment. From 1870, the required motivation needed for the development of local institutions was given by the resolution of Viceroy Lord Mayo. Initially, the local bodies like panchayats functioned as civic centers of the state government. During the five-year plan, the rural development strategies started to evolve, and attempts were being made to establish a three-tier Panchayat system in India. In 1957, the Balwant Rai committee recommended the formal organization and structure of Panchayati Raj Institution. This body, which became known as Panchayati Raj, introduced the concept of 'democratic decentralization'. It also advocated for a three-tier structure at the village, block, and district levels, as well as direct local Panchayat elections.

Structure and working of Panchayati Raj Institutions

⁴ Constitution of India (n 3)

The Panchayati Raj system was formed in line with the 73rd Amendment of the Constitution. It is a three-tiered organisation based on the direct elections at all three levels, mainly village, intermediate, and district. Panchayats may also be represented by members of the State Legislature and Parliament. The inclusion of the chairpersons of the village panchayats at the block and district levels, as well as the reservation of seats for Scheduled Castes and Scheduled Tribes, have all been addressed. One-third of the overall seats are reserved for women, while one-third of the Scheduled Castes and Scheduled Tribes quota is reserved for women.

THREE-TIER STRUCTURE OF PANCHAYATI RAJ

1. Gram Panchayat

The first level of the Panchayati Raj system is the Gram Panchayat. Gram Sabha's governing body. Panchayat is made up mostly of representatives elected by the people of the village. Those who are registered and do not hold any profit-making government post are eligible to run for Panchayats, but those who have been convicted of criminal offences by a court are not. Each Panchayat elects a President (Sarpanch) and a Vice-president (Upsarpanch). He serves as an ex-officio member of the Panchayat Samiti (Block level), which is in charge of overseeing and coordinating the actions of the panchayat. He is involved in the decision-making process as well as Pradhan's election. He is the chief executive officer. The Village Development Officer (VDO) is a development department extension functionary who serves as the primary link between Panchayats, Block, and Panchayat Samitis. Gram Panchayats performs bi-fold functions: civic and developmental. Conservation, water supply, sanitation, road building and maintenance, lighting, elementary education, cemetery management, and other civic services are all examples of civic functions. Furthermore, Gram Panchayat functions as an agent of the Panchayat Samiti for the execution of development schemes at the local levels.

2. Panchayat Samiti

The Panchayat Samiti is the Panchayati Raj Institution's second layer. It is responsible for the majority of planning and development duties. Their names vary from one state to the next. MLAs and MPs from the appropriate area are associate members of the Panchayat Samiti.

Members are chosen indirectly in most states, and the majority of the members are ex-officio. The chairman is the president of the Panchayat Samiti, who is elected by an electoral college made up of Samiti's members as well as all the panchas of the Gram Panchayat. The vice-chairman is chosen as well. In practically all states, with the exception of Andhra Pradesh and Tamil Nadu, the chairman is elected indirectly. The Panchayat Samiti is the most powerful body in charge of developmental functions like increasing agricultural productivity, animal husbandry, and local industries. Construction and advancement of irrigation wells, promotion of co-operatives, the establishment of hostels for Scheduled castes, Scheduled Tribes, Backward classes, trees planting, input supply and distribution, women and child welfare, family planning, and other activities are among them, etc.

3. Zila Parishad

The Panchayati Raj system's third tier is the Zila Parishad. It is in charge of Panchayat and Panchayat Samiti activities. It is made up of Panchayat Samiti members. All the members of the State Legislature and the Parliament are elected to represent a portion of the entire district. It advises the government on developmental plans and how money is distributed among the Samitis. The chairman of Parishad is chosen by the members. Members of Parliament, Legislative Assemblies, and Councils from the districts are among the nominated members of the Zila Parishad. Every Zila Parishad was given a chief executive officer by the state government. The primary function performed by the Zila Parishads is in relation to coordination and planning along with a few executive functions. It prepares district plans and consolidates with the Samiti plans and submits them to the State Government. There is no consistency regarding the functions of the Zila Parishad. Some of the significant functions of Zila Parishad are inspection and approval of the budgets of Panchayat Samitis, dissemination of funds between various Blocks, coordination, and consolidation of Block plans. It also has the responsibility for the maintenance of hospitals, irrigation work, development of local industries, dispensaries, primary and secondary schools, etc.

GRASSROOT LEVEL DEMOCRACY AND DECENTRALIZATION: AN ANALYSIS

It is commendable that India has a kind of grassroots democracy and dominance, and that Panchayati Raj Institutions have contributed to the development and progression of rural areas. Since independence, India has been a welfare state with the wellbeing of its populace as the primary goal of all levels of government. The eradication of poverty, ignorance, diseases, and inequality of opportunity as well as providing a better and higher quality of life are the cardinal principles of government. In India's democratic framework, there is three levels of government i.e. national, state, and local government. Panchayati raj system is the backbone of democracy. The 73rd Amendment of the Constitution that may be marked as a revolutionary step towards the generation of a golden era for rural democracy in India seems to have established the grass-root democracy. The emphasis on strengthening village-level democracy represents a watershed moment in the evolution of the Panchayati Raj system.

The present universal trend in democratic governance is democratic decentralization and strengthening of local self-governments that are recognized as the strongest grass-root levels democratic institutions. People in the villages got the opportunity to participate in governmental activities and hence could be politically socialized. The Panchayati Raj bodies, as legitimate and effective democratic decentralization institutions, provides ample opportunities for a large number of rural people to participate in the developmental and democratic decision-making process effectively and legitimately, and to instill the spirit of self-help, self-dependence, and self-reliance in the minds of rural people, and to gain experience in the art of local government. It has brought democracy to the doorstep of the humble household. The Panchayati Raj, being a practical and tested form of decentralization of the policy, and the growth and development machinery, has become a tool of progress at the very grass-roots of our national life. It provides a basic foundation for the concept of democracy. In Panchayati Raj, local people are always imbued with the local problems and they can solve these problems at their own level.

ROLE OF PANCHAYATS IN VARIOUS GOVERNMENT'S WELFARE SCHEMES AND STATUTES

Gram Panchayat performs a very essential role in the implementation of government schemes and statutes. There is a direct interaction between people at the grassroots and Gram Panchayat. Gram Panchayats must be vested with the requisite powers and authority for the effective implementation of such schemes and statutes.

1. Mahatma Gandhi National Rural Employment Guarantee Act:

The importance of the Panchayati Raj institutions in the proper and effective implementation of the Mahatma Gandhi National Rural Employment Guarantee Act (Mahatma Gandhi NREGA) in the rural areas has been highlighted. For the purposes of planning and implementing NREGA, the Panchayats at the district, intermediate and village levels are the ultimate authority. Half of the NREGA fund must be contributed by the Gram Panchayat. Gram Sabha is in charge of recommending special projects to Gram Panchayats and ensuring that NREGA activities are socially audited. Various initiatives have been taken to raise the awareness of MNREGA like required staffing and infrastructure for Gram Panchayats, direct transfer of funds to Gram Panchayats, improved transparency and accountability, and establishment of effective grievance management and monitoring mechanism.

2. Implementation Of Forest Right Act:

Under the Forest Rights Act, 2006⁵, the Gram Sabha has been authorized the following roles for the implementation of the provisions of the Act:

- To provide a secure livelihood to the affected individual forest rights holders and communities whose forest rights were subsequently modified or resettled by considering the resettlement or alternative packages provided by the State Government.
- To preserve the habitat of forest-dwelling, Scheduled Tribes and other traditional forest dwellers from any form of destructive practices affecting the cultural and natural heritage.
- To protect the wildlife, biodiversity, adjoining catchments areas, water sources, other ecologically sensitive areas.

⁵ Forest Rights Act, 2006

3. Panchayats (ExtentionTo The Scheduled Areas) Act, 1996 (PESA):

Gram Sabha has been constituted in every state in compliance with the Panchayati Raj Act or PESA Rules of the respective state. PESA implementation guidelines have been created only in four states, namely Andhra Pradesh, Himachal Pradesh, Maharashtra, and Rajasthan. The Gram Sabha is responsible for approving all the village developmental works, Identifying beneficiaries, giving certifications of money use, and monitoring institutions and officials across all social sectors and local plans. Furthermore, the Gram Sabha and Panchayat shall have the following powers at the appropriate levels: managing minor water bodies; requiring consultation in matters of land acquisition, resettlement, and rehabilitation; prospecting licenses/mining leases for minor minerals; regulating and restricting consumption and sale of liquor; preventing alienation of land and restoring alienated land; controlling money lending; ownership of minor forest products, and so on.

Gram Panchayat Development Plan (GDPD [Sabki Yojana, Sabka Vikas]

On October 2nd, 2018, the Central government launched this campaign. While preparing structured developmental plans for the Gram Panchayat, involves the people at the grass-root level. Under this campaign, the Gram Panchayat will have to disclose all the sources from where funds are collected, their spending along with future development initiatives. The Gram Panchayat development plan is an annual plan developed by each Panchayat in which the residents how to decide how the money should be spent.

NITI AAYOG AND COOPERATIVE FEDERALISM

The Modi Government abolished the Planning Commission on 13th August 2014 and replaced it with a new body to better serve the needs and aspirations of the Indian people. As a result, on January 1, 2015, the NITI Aayog (National Institution for Transforming India) was established to replace the planning commission. NITI Aayog, like the Planning commission, was established by the Government of India executive resolution. It is a non-statutory, non-constitutional or extra-constitutional body, in other words. NITI Aayog is India's main policy 'Think Tank', giving both directional and policy inputs to the government. In the spirit of

federalism, policy thought is formed by a 'bottom-up' approach rather than a 'top-down' approach. The constitutional role of States as equal partners in national development and operation of the principle of Cooperative Federalism is the cornerstone of the organization. Some of the objectives of NITI Aayog are:

- To foster cooperative federalism through structured support initiatives and mechanisms with the states.
- To develop systems for formulating credible plans at the village level and aggregating progressively at higher levels of government.
- To pay special attention to those sections of our society which may be at the risk of not getting benefit from economic progress?
- To focus on technology up-gradation and capacity building for proper implementation of programs and initiatives.
- To eliminate poverty and provide the chance for every Indian to live a life with dignity and self-respect.
- To integrate villages institutionally into the development process.
- Through its commitment to cooperative federalism, promotion of citizen engagement, equitable access to opportunity, participative and adaptive governance, and increasing use of technology, the NITI Aayog seeks to provide a critical directional and strategic input into the development process.

INTERFERENCE OF STATE GOVERNMENT; HINDRANCE TO THE INDEPENDENCE OF PANCHAYATI RAJ INSTITUTIONS

The intrusion of the State Legislature in the working of Panchayats results in the reduction of functional and administrative autonomy of the Panchayati Raj Institutions. The functions of each level of Panchayats have not been specified in detail, particularly in relation to the 29 subjects that have been included in the Eleventh schedule. The addition of the Eleventh Schedule to the Constitution which lists various subjects to be handled by the Panchayati Raj Institutions does not imply that the Panchayats have been given a constitutionally independent set of functions in the same way that the Union and the States were given in the

Seventh schedule. The overlapping control of Panchayati Raj Institutions and the State Government over the administrative machinery for implementing development programs entrusted to the Panchayati Raj Institutions. According to *Article 243 K*⁶ of the Indian Constitution,

- *“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.*
- *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.”*

The State Election Commission has been entrusted with the planning, direction, control, and conduct of the elections of Panchayats, as stated in the above-mentioned Article of the Constitution. The Calcutta High Court issued a direction to the State Election Commission to accept nominations submitted in the electronic form in one of the most controversial cases, *West Bengal State Election Commission and others v communist party of India (Marxist) and others*⁷. The names of the election candidates were required to be made public. When issuing these directions, the High Court was aware that the West Bengal State Election Commission is a constitutional body, and the provisions of the Information Technology Act 2000⁸ did not apply to it. The High Court on the other hand determined that the provisions of the Information Technology Act 2000 should not be deemed to be read into the provisions of the West Bengal Elections Act 2003⁹. If such construction will enhance the democratic process and facilitate a fair and free election, the High Court issued directions to accept the nominations in electronic form.

⁶ Constitution of India, 1950, art 243K

⁷ *West Bengal State election Commission and others v communist party of India (Marxist) and others* 2018 SCC 741

⁸ Information Technology Act, 2000

⁹ West Bengal Election Act, 2003

RESEARCH FINDINGS AND SUGGESTIONS

- A number of adjustments will be required in the administrative procedure for program design and effective implementation entrusted to the Panchayati Raj Institutions in relation to plans and programs. The encroachment of State Government on the administrative machinery has resulted in a significant loss in the functional sovereignty of all the entities to a considerable extent.
- Constitutionalizing of State Election Commission will ensure the free and fair election of panchayats to a considerable extent.

CONCLUSION

India's sense of nationhood remains at the heart of the relation between the centre, states, and local tiers of government. It is very much essential for the progress and development of India. The task of preserving our nationhood by means of constructive cooperative federalism must obey by both the Centre and State governments. The centre should cooperate with the states and the local governments by giving them the necessary autonomy in their policymaking and providing them with adequate funds. India is a place where different types of people, cultures, and ideas exist together. These things are needed to be valued and it can be done by the way of cooperative federalism. Federalism in India is no more a two tier system. It is supposed to be a three tier system including the Panchayats. There must be proper coordination and cooperation amongst all the tiers of government.