

# **Panchayati Raj System in Independent India**

## **73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments**

73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments were passed by Parliament in December, 1992. Through these amendments local self-governance was introduced in rural and urban India. The Acts came into force as the Constitution (73rd Amendment) Act, 1992 on April 24, 1993 and the Constitution (74th Amendment) Act, 1992 on June 1, 1993. These amendments added two new parts to the Constitution, namely, 73rd Amendment added Part IX titled “The Panchayats” and 74th Amendment added Part IXA titled “The Municipalities”. The Local bodies-‘Panchayats’ and ‘Municipalities’ came under Part IX and IXA of the Constitution after 43 years of India becoming a republic.

### **Salient Features of the 73rd and 74th Constitution Amendment Acts**

Panchayats and Municipalities will be “institutions of self-government”.

1. Basic units of democratic system-Gram Sabhas (*villages*) and Ward Committees (*Municipalities*) comprising all the adult members registered as voters.
2. Three-tier system of panchayats at village, intermediate block/taluk/mandal and district levels except in States with population is below 20 lakhs (*Article 243B*).
3. Seats at all levels to be filled by direct elections [*Article 243C (2)*].
4. Seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) and chairpersons of the Panchayats at all levels also shall be reserved for SCs and STs in proportion to their population.
5. One-third of the total number of seats to be reserved for women. One-third of the seats reserved for SCs and STs also reserved for women. One-third offices of chairpersons at all levels reserved for women (*Article 243D*).
6. Uniform five year term and elections to constitute new bodies to be completed before the expiry of the term. In the event of dissolution, elections compulsorily within six months (*Article 243E*).
7. Independent Election Commission in each State for superintendence, direction and control of the electoral rolls (*Article 243K*).

8. Panchayats to prepare plans for economic development and social justice in respect of subjects as devolved by law to the various levels of Panchayats including the subjects as illustrated in Eleventh Schedule (*Article 243G*).
9. 74th Amendment provides for a **District Planning Committee** to consolidate the plans prepared by Panchayats and Municipalities (*Article 243ZD*).
10. Funds: Budgetary allocation from State Governments, share of revenue of certain taxes, collection and retention of the revenue it raises, Central Government programmes and grants, Union Finance Commission grants (*Article 243H*).
11. Establish a Finance Commission in each State to determine the principles on the basis of which adequate financial resources would be ensured for panchayats and municipalities (*Article 243I*).

## **Other Important Provisions of Part IX of the Constitution**

Part IX contains **Article** 243 and **Articles** 243A to 243-O.

- Article 243 relating to definitions has defined various terms as follows:  
“District” means a district in a State; “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level; “Intermediate level” means a level between the village and district specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part; “Panchayat” means an institution of self-government constituted under article 243B for the rural areas; “Panchayat Area” means the territorial area of a Panchayat; “Population” means the population as ascertained at the last preceding census of which the relevant figures have been published; “Village” means a village specified by the Governor by a public notification to be a village for the purposes of this Part and includes a group of villages so specified.
- Under Article 243A, a Gram Sabha is empowered to exercise such powers and perform such functions at the village level as provided by law.
- As per Article 243C, the Legislature of a State is empowered to make provisions with regard to composition of Panchayats. The Panchayat

area shall be divided into territorial constituencies. The State is empowered to provide for the representation of the chairpersons of the Gram Panchayats, at the village level, the intermediate level or, in the Panchayats at the district level; and MPs of LS / RS, and MLAs/MLCs at a level other than the village level in such Panchayat; where they are registered as electors in Panchayat at the intermediate level and in Panchayat at the district level.

- The chairperson of a Gram Panchayat shall be elected in such manner as provided by law, and of a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members.
- Under article 243J, the Legislature of a State is empowered to make provisions with respect to the maintenance and auditing of accounts of the Panchayats.
- Article 243L provides that the provisions of the Part IX shall apply to the Union territories.
- Under article 243O, the Courts are barred from interfering in electoral matters such as the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies. No election to any Panchayat can be called in question except by an election petition as provided under any law made by the Legislature of a State.

### **Specific Provisions for Tribal and Scheduled Areas**

- Article 243M (1) provides that this Part shall apply to the Scheduled Areas referred to in clause (1) and the tribal areas referred to in clause (2) of article 244.
- (2) This Part shall apply to (a) the States of Nagaland, Meghalaya and Mizoram; (b) the hill areas in the State of Manipur for which District Councils exist under any law for the time being in force.
- (3) Nothing in this Part
  - (a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;
  - (b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

- (3A) Nothing in article 243D, relating to reservation of seats for the Scheduled Castes, shall apply to the State of Arunachal Pradesh (83rd Amendment, September 08, 2000).
- (4) However, the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;
- Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

As required under Part IX of the Constitution, all the States and UTs have enacted/amended their Panchayati Raj Acts incorporating the provisions of Part IX.

### **The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996**

Enactment of “The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996” (PESA) was a step taken by the GOI to provide for the extension of the provisions of the Part-IX of the Constitution relating to the Panchayats to the Fifth Schedule Areas with certain modifications as provided under Article 243M(4)(b) of the Constitution. This legislation has not only extended the development, planning and audit functions to the GS in the Fifth Schedule Areas but has also endowed it with the management and control of natural resources and adjudication of justice in accordance with traditions and customs.

### **Efforts Made towards Democratization in Non-Part IX States**

The MoPR was established primarily to oversee the implementation of Part IX of the Constitution, the PESA Act and Article 243ZD of Part IX-A relating to the District Planning Committees. Although the Panchayats have historically been an integral part of rural life in India, these Acts have institutionalized the PRIs at the village, intermediate, and district levels as the third tier of government. The aim of MoPR has been to combine social justice with effective local governance, with an emphasis on reservation of

seats for the deprived classes of population, including of the leadership positions.

Tribal areas generally mean areas having preponderance of tribal population. However, the Constitution of India refers tribal areas within the States of Assam, Meghalaya, Tripura and Mizoram, as those areas specified in Parts I, II, IIA & III of the table appended to paragraph 20 of the Sixth Schedule. In other words, areas where provisions of Sixth Schedule are applicable are known as Tribal Areas.

**PART I**

1. The North Cachar Hills District
2. The Karbi Anglong District
3. The Bodoland Territorial Area District

**PART II**

1. Khasi Hills District
2. Jaintia Hills District
3. The Garo Hills District

**PART IIA**

Tripura Tribal Areas District

**Part III**

1. The Chakma District
2. The Mara District
3. The Lai District

Though Panchayats have not been constituted in some of the areas (meaning Panchayats don't exist), in accordance with the provisions of Part IX, the Ministry, nonetheless, took action for deepening of decentralized governance in these areas to foster efficiency, transparency and accountability of the local/traditional bodies/ institutions.

MoPR initiated a detailed process of consultations with different States and concerned Ministries of the GOI. A meeting of representatives of concerned Ministries and State Governments was also held on November 16, 2010, at New Delhi, wherein it was decided that instead of resorting to a constitutional amendment, it would be appropriate to bring in necessary amendments in laws relating to Autonomous District Councils and Village Councils as initial steps to deepen the process of democratic functioning. The legal frameworks of local self-government in north eastern region vary from State to State and these needed to be reviewed in the context of representation of women, direct elections, etc. In other words, the draft

amendments were prepared for States where elected Village Councils exist but they lack basic features of democratic functioning like conduct of regular elections, universal suffrage, reservation for women, etc.

An Inter-Ministerial Team (IMT), of the representatives of the Ministries of Panchayati Raj, Home Affairs, Tribal Affairs, Development of North Eastern Region and Urban Development, visited North Eastern Regions over a period of three years and held consultations with individual States. The IMT prepared draft Bills and forwarded suggestions to the State Governments for undertaking amendments to State laws. The IMT had proposed the following:

- In Assam and Meghalaya, new Village Councils were proposed through State Laws.
- In Nagaland and Manipur, elected Village Councils instead of the traditional Village Councils were recommended.

The Bills drafted by MoPR incorporate the objectives of deepening decentralized governance through provisions like:-

- a) Make Village Council answerable to Gram Sabha (GS), recognize GS under the law and specify their powers and functions
- b) Rationalize the powers of State Government and the District Councils in the matters of extension and supersession of Councils, thereby making the process transparent and to hold elections within six months after such a supersession
- c) Provide for reservation of women
- d) Mandatory and regular election of the Village Council through the State Election Commission
- e) Make women members' participation part of the quorum in GS and Council meetings
- f) Constitute State Finance Commission where not existing
- g) Vesting of both developmental and some judicial powers on the Village Councils, and vest more powers to Village Councils and Gram Sabha

## **Local Governance in Jammu and Kashmir**

In Jammu and Kashmir, the roots of Panchayati Raj were planted by Maharaja Hari Singh in 1935 by promulgation of the Jammu and Kashmir Village Panchayat Regulation No.1. A special Department of Panchayats and Rural Development was created in 1936 to administer the 1935 Regulation. By an amendment in 1941, the list of functions of the 1935 Regulation was widened. By an Act of 1951, the PRIs were adopted to be re-established. The J&K Government thereafter enacted the Village Panchayat Act in 1958 replacing the 1951 Act and in 1989; the in-force Jammu and Kashmir Panchayati Raj Act came into existence. This Act provides for three tier PRI system which is called Halqa Panchayat, Block Development Council and District Planning and Development Board for the village, block and district levels respectively. Each Halqa Panchayat comprises of 7 to 11 panches and a sarpanch. The sarpanch and panches are elected directly by the people. A naib sarpanch is nominated by all the panches of a Halqa Panchayat. Naib sarpanch performs the same duties as those of sarpanch in the event of sarpanch not being in a position to fulfill his/her duties. A village level worker will be the secretary of the Halqa Panchayat.

The provisions of the 73rd Constitutional Amendment are yet to be implemented by the Government of J&K. However, the State framed 'The Jammu and Kashmir Panchayat Rules, 1996, based on its own Panchayati Raj Act of 1989. In a positive development, the elections to the Halqa Panchayats were conducted successfully in 2011. While the State of J&K is moving ahead with the Panchayati Raj provisions of the Act passed in the State legislature, it has not accepted the 73rd Amendment in *toto*.

## **Gram Panchayat Development Plan (GPDP)**

Devolution of powers i.e. funds, functions and functionaries (3 Fs) to the PRIs and revision of CSS guidelines for providing roles and responsibilities to the PRIs for planning, monitoring and implementation are the important aspects of Decentralised planning. Article 243G of the Indian Constitution mandates preparation of plans for economic development and social justice by Panchayats and through this process Panchayats are expected to evolve into institutions of local self-governance. For optimum utilisation of resources for the benefit of their citizens, preparation of integrated development plans by GPs has become a necessity.

GP development plan should ideally match peoples' needs and priorities with available resources and additionally mobilise local resources through a fair, inclusive, transparent and participatory process. The focus should be on local development issues, local perception of need and priority, local analysis of problems and solutions, local resources management all within a collective local vision. A typical GPDP consists of following steps –

1. Identification of Resources (Financial and Human) in the GP
2. Generation of Environment for Participatory Planning through Mass Media / local interactions etc.
3. Situational Analysis by assessing infrastructure, civic amenities, human, economic and social development, natural resources and Participatory Planning
4. Projectisation by prioritizing activities and assigning the appropriate persons, timeline, performance indicators and expected outcome
5. Finalisation of Development Plan of GP for both annual and five years
6. Technical and Administrative approval
7. Institutional Support including MIS
8. Capacity Building for Participatory Planning



## **The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996” (PESA)**

Ministry of Panchayati Raj (MoPR) oversees the implementation of Part IX of the Constitution, the provision regarding District Planning Committee as per Article 243ZD in Part IXA and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) in the Fifth Schedule Areas. The Constitution (Seventy-Third Amendment) Act, 1992, which came into force w.e.f. 24th April, 1993, inserted Part IX in the Constitution of India and accorded Panchayats a Constitutional status as institutions of local self-governance for rural India.

Article 243M (1) of the Constitution exempts Scheduled Areas and tribal areas referred to in Clause (1) and (2) of article 244 from application of the provisions of Part IX of the Constitution. However, article 243M (4) (b) empowers the Parliament to legislate and extend the provisions of Part IX to Scheduled Areas and tribal areas referred to in clause (1), subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment of the Constitution for the purpose of article 368.

### **Fifth Schedule Areas**

The Fifth Schedule of the Constitution deals with the administration and control of Scheduled Areas as well as of Scheduled Tribes residing in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. “The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996” (PESA), extends Part IX of the Constitution with certain modifications and exceptions, to the Fifth Schedule Areas notified under article 244(1) of the Constitution. At present, Fifth Schedule Areas exist in 10 States viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

### **Definition of Village and Gram Sabha**

Under the PESA Act, {section 4 (b)}, a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.

Under the PESA Act, {section 4 (c)}, every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.

PESA exclusively empowers Gram Sabha to

- (i) safeguard and preserve the (a) traditions and customs of the people, and their cultural identity, (b) community resources, and (c) customary mode of dispute resolution
- (ii) carry out executive functions to
  - (a) approve plans, programmes and projects for social and economic development;
  - (b) identify persons as beneficiaries under the poverty alleviation and other programmes
  - (c) issue a certificate of utilisation of funds by the Panchayat for the plans; programmes and projects

PESA empowers Gram Sabha/ Panchayat at appropriate level with

- i. right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons
- ii. panchayat at an appropriate level is entrusted with planning and management of minor water bodies
- iii. mandatory recommendations by Gram Sabha or Panchayat at appropriate level for prospective licenses/lease for mines and concession for the exploitation of minor minerals
- iv. regulate sale/consumption of intoxicants
- v. ownership of minor forest produce
- vi. prevent land alienation and restore alienated land
- vii. manage village markets
- viii. control over money lending to STs
- ix. control over institutions and functionaries in social sector, local plans including Tribal sub plans and resources

### **Importance of PESA**

Effective implementation of PESA will not only bring development but will also deepen democracy in Fifth Schedule Areas. There are many benefits of PESA. It will enhance people's participation in decision making. PESA will reduce alienation in tribal areas as they will have better control over the utilisation of public resources. PESA will reduce poverty and out-migration among tribal population as they will have control and management of natural resources will improve their livelihoods and incomes. PESA will

minimise exploitation of tribal population as they will be able to control and manage money lending, consumption and sale of liquor and also village markets. Effective implementation of PESA will check illegal land alienation and also restore unlawfully alienated tribal land. And most importantly PESA will promote cultural heritage through preservation of traditions, customs and cultural identity of tribal population.