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With this thought, we hereby present to you



# **A COMPARATIVE ANALYSIS OF JUDICIAL ACTIVISM AND THE EVOLUTION OF PANCHAYAT RAJ INSTITUTIONS IN INDIA: GRASSROOTS DEMOCRACY**

AUTHORED BY - THENDRALARASI R<sup>1</sup> & -PASUPATHI G K<sup>2</sup>

## **ABSTRACT**

This research could delve into how the Judiciary in India played a prominent role in promoting decentralization and grassroots democracy through its interventions in the development and functioning of Panchayat Raj Institutions. The Panchayat Raj-related disputes need special attention, mainly related to local issues. The problems arising from the interpretation of laws, orders, and application of procedures are dealt with by the state judiciary, and on appeal, it goes to the Supreme Court. Failure to conduct regular local body elections before the expiry of the term of the Panchayats, more often than not the solution is arrived at, only after the court intervenes. The validity of laws and rules framed under the various acts is tested by the courts. This paper could help to explore various landmark judicial pronouncements, such as those related to the implementation of the 73rd Constitutional Amendment Act, which mandated the establishment of Panchayat Raj institutions, and analyses how the judiciary has interpreted and enforced these provisions over time.

KEY WORDS: Panchayat Raj, Grassroots Democracy, Judiciary, Judicial pronouncements

## **INTRODUCTION**

The term panchayat derives from the word Pancha, which refers to a five-member institution and appears in Mahabharata's Shanti-Parva. Pancha and panchavanustitah are semantically similar to panchayat. A description of these village councils may also be found in Kautilya's Arthashastra (400 B.C.). Arthashastra describes in detail the village administrative structure that existed at the period. During this time, the village administration was supervised and controlled by the Adyaksha, or headman. Other authorities included Samkhyaka (accountant), Anikitsaka

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(veterinary doctor), Jamgh Karmika (village courier), and Chikitsaka (physician). The village headman was in charge of collecting state dues and monitoring criminals' actions. The Ganapada, or village federation, is mentioned in Valmiki's Ramayana and might be interpreted as a federation of village republics.<sup>3</sup> In many states, the Panchayat Raj institutions are conferred with judicial functions. There are statutory Panchayats. But there are some traditional Panchayats where disputes are decided. The statutory Panchayats are formal, legal well-organized units and the judiciary plays a vital role in developing the Panchayat Raj system. In this paper, the role of the judiciary in developing and shaping the Panchayat Raj institutions is examined.

### **PANCHAYAT RAJ - JURISPRUDENCE<sup>4</sup>**

The 73<sup>rd</sup> constitutional amendments is one of the longest and most detailed amendments made to the constitution there is going to be an evolutionary process through case law for establishing a body of jurisprudence relating to Panchayat Raj. There are approximately more than 100 judgments of the Supreme Court and is estimated that there are approximately 600- 700 cases pertaining to Panchayat Raj pending before courts. At the same time, it is noted that nearly 90% of these cases relate to individual election disputes and therefore, the number of outstanding basic issues of Panchayat Raj jurisprudence is relatively limited. The union ministry of Panchayat Raj network institutions such as the bar council of India law institute, the rural litigation and entitlement Kendra, the institute of social science, the society of Indian law firms and other expert bodies to review and categories the available decisions of the courts with a view to preparing a list of jurisprudential points which might be referred, on the one hand to the authorities concerned in the Union Government, on the other hand to the law commission and the law commissions which have been set up in some states as appropriate on the other. A clear and consistent body of jurisprudence is essential for the full and proper implementation of the constitutional provisions in accordance with letter and spirit of the 73<sup>rd</sup> Constitutional Amendment Act. The Constitutional Amendment of 1992 (the 73<sup>rd</sup> Amendment) adds the IXth Part to India's Constitution. It had sixteen articles and the eleventh schedule of the Act. The 73<sup>rd</sup> Amendment Act envisioned the Gram Sabha as the foundation of the Panchayati Raj system, carrying out the powers and abilities delegated to it by the state. The amendment introduces a three-tier Panchayati Raj system at the village, intermediate, and district levels.

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<sup>3</sup> Ghosh Rathna, Pramanik Alok Kumar, Panchayat System in India. Historical, Constitutional and Financial Analysis, (Kanishka Publication, New Delhi, , pp. 208; 1999)

<sup>4</sup> Source: Forth Round Table Conference of Minister in Charge of Panchayat Raj, Chandigarh 7-8, October 2004.

Smaller states with populations under 20 lakh are not required to represent Panchayats at the intermediate level, according to state policy.<sup>5</sup>

## **ISSUES OF JUDICIAL INTERPRETATION RELATED TO THE PANCHAYAT RAJ SYSTEM**

### **LOCAL AUTHORITY**

According to section 3 (31) of the General Clauses Act, 1897 “local authority” shall mean a municipal committee, district board, body of commissioner, or other authority lawfully qualified for or endowed by the public authority inside the control or the board of a municipal or local fund. According to entry 5 of the List II of the seventh schedule ‘Local Government’ includes municipal operation, improvement of trusts, district boards, other local authorities, and mining settlement authorities for rural local self-government or village administration. Town Panchayat is additionally included inside the importance of the expression “local authority”<sup>6</sup>

According to Article 12 of the Indian Constitution, for fundamental rights, which are discussed under Article 12 to 35 unless the context otherwise requires, the term "state" incorporates the public authority and parliament of India and the public authority and the lawmaking body of every one of the state and all neighborhood or different specialists inside the region of India or heavily influenced by the public authority of India. Thus, for the purpose of part III of the Indian constitution the “state” includes the elective and legislature of the union, executive and legislature of the states, local and other authorities within the territory of India<sup>7</sup>.

### **MAINTAINABILITY OF WRITS BY OR AGAINST LOCAL AUTHORITIES**

A nearby authority having a lawful complaint might have the option to take out a writ. Therefore, a writ was issued on the petition of the local authority against the public utility concern, for the latter’s failure to fulfill its statutory obligation to apply power to the local authority, a consumer; Corporation of Nagpur v. N.E.L. & P Co.<sup>8</sup>. Similarly, when there is a grievance against the local authority, a writ can be filed against the local authority under Article 226 of the Indian constitution at the High Court of any state or under Article 32 of

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<sup>5</sup> Dr. J.N.Pandey, Constitutional Law of India, 645, (Central Law House, 54th ed)

<sup>6</sup> See Ajit Singh V. State of Punjab, AIR 1967 SC 856

<sup>7</sup> P.M. Bakshi, the Constitution of India, Universal Law Publishing Co. Pvt. Ltd. 2003 p.10

<sup>8</sup> AIR 1985 Bom. 498

the Indian constitution at the Supreme Court of India.

### **SUPREMACY OF THE CONSTITUTIONAL PROVISION**

In India, the constitution is the supreme law of the land and any law or state legislation inconsistent with the constitution shall be declared as void or unconstitutional to the extent of inconsistency. If the offending portion cannot be severed from the main law then the whole law will be declared as void. This happened in Prem Lal Patel's case<sup>9</sup>. The petitioner has assailed the Ordinance No, 10 of 2000, through which certain amendments were made in the Uttar Pradesh Panchayat Act, 1947, on the ground that the Ordinance was ultra vires to the provisions of Article 243 E (3) (a) of the constitution of India which came into force on 24<sup>th</sup> April, 1993 by the 73<sup>rd</sup> Constitutional Amendment Act, 1992. It was held by the Supreme Court that "The entire Ordinance No.10 of 2000, through which provisions of U.P. Panchayat Raj Act, were revised are proclaimed illegal and ultra vires to the Constitution of India".

### **DURATION OF THE PANCHAYAT**

The 73<sup>rd</sup> Constitutional Amendment Act, 1992 provides for the duration of the Panchayats. The rural local self-governments that were in existence in many states were not having uniform tenure. To have uniform tenure. To have uniform tenure by fixing the term of Panchayat, Article 243 E was included and it says that every Panchayat in all the three tiers unless it is sooner broken up under any law for the time being in power, will proceed for a long time from the date of arrangement for its first gathering and it shall not continue any longer. But there are some states like Bihar where Panchayat elections were not held for a long time. Once elected, Panchayat members and heads continued for more than the fixed term of five years.

### **DELAY IN CONDUCTING REGULAR ELECTIONS TO THE PANCHAYATS**

The election of the Gram Panchayat in the State of Bihar had taken place long back in the year 1978 and as per the Bihar Panchayat Raj Act, 1993 members elected about 20 years back should not be permitted to remain in office for further indefinite period and administer the management of Gram Panchayats. The appellants Rural Litigation and Entitlement Kendra<sup>10</sup> submitted that until a fresh election is held during the interregnum period, the administration of the Gram Panchayat should be better run by the government officials. Hence, after the 73<sup>rd</sup> Constitutional

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<sup>9</sup> Prem Lal Patel V. State of Uttar Pradesh through Secretary, Panchayat Raj and another (W.P. No. 1371 of 2000, High Court of Allahabad)

<sup>10</sup> Rural Litigation and Entitlement Kendra v. State of Bihar (1997) 9 SCC 215

Amendment Act came into force, it is mandatory to conduct the elections every five years and the duration of the Panchayat at any level should not exceed five years at any given point of time.

## **PUBLIC INTEREST LITIGATION AND PANCHAYATS**

When regular elections are not conducted for the Panchayats within the stipulated time and when the constitution directs the respective state governments to conduct the same, Public Interest Litigations are filed by public-spirited individuals or by non-governmental welfare organizations. One such case<sup>11</sup> is the following where the petitioner questions the irregularity in conducting the Panchayat elections. The main question that arose for consideration in this writ petition was the irregularity of elections to the Gram Panchayats in various states. The Supreme Court of India held that; "It is imperative to complement that various stipulations of Article 243 are to be proceeded in letter and soul. The concerned states can't be allowed to retain the appointment of Panchayats except in instances of certified troubles to hold such elections e.g. unforeseen common disasters in the state like a flood, earthquake, etc. or on the other hand, very earnest circumstances winning in the state for which appointment of the Panchayats can't be held inside the period. It will be deplorable if the concerned states stay coldhearted toward the protected order of holding appointment of Panchayats in time"

## **NON-INTERFERENCE WITH ELECTION PROCESS**

As given in Article 243 (O) (b) no election to any Panchayat will be brought being referred to besides in a political decision request introduced to such power and in such way as is accommodated by or under any law made by the council of a state. Generally the court does not interfere with the election process, when the process of election has already started. Writ jurisdiction of the court is to be invoked only when the elections are over and after the results are declared. It is only an election petition which should be filed and the state legislation provides the rules related to the same.

In *C. Subramaniam v. K. Ramanjaneyullu and others*<sup>12</sup>, the high court order on an election petition was challenged. The impugned order was made by the high court in a writ petition under Article 226 of the constitution of India filed to challenge an order directing re-poll made during the process of election. The high court took the view that the main point for decision

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<sup>11</sup> Rural Litigation and Entitlement Kendra and Another V. State of Uttar Pradesh and others, Writ Petition No. 719 of 1995, High Court of Allahabad

<sup>12</sup> (1998) 8 SCC 703

was whether the order directing re-poll is in violation of section 231 of the Andhra Pradesh Panchayat Raj Act, 1994. The high court proceeded to say that, a reference was made to a provision of the constitution in that order and therefore, the writ petition would lie and the censured request was suppressed for infringement of section 231 of the Act. The Supreme Court held that, "the writ request under Article 226 of the Constitution of India ought not have engaged for this reason"

The Indian Judiciary is very mindful of the fact and consequences in conducting the local body elections without fail within the stipulated time mentioned as per the Indian Constitution. The following case<sup>13</sup> amply explains this desire of the Supreme Court in conducting the local body elections without any delay as per the provisions of the Indian Constitution<sup>14</sup>. Various writ petitions were filed in the Karnataka High Court wherein it was held that the Karnataka Panchayat Raj (Reservation of Seats in Taluk Panchayats and Zilla Panchayats) Rules, 1998 held to be ultra vires and void. An appeal was filed in the Supreme Court seeking stay of operation of the impugned judgment and for grant of interim relief. The Supreme Court stayed the operation of the impugned judgment and court further directed that the elections be held by an order dated on 3-10-2005 and the local body elections cannot be kept in abeyance indefinitely. The court further directed that the elections held shall be subject to the result of this appeal. The present applicants have filed for implementation as party-respondents and for seeking vacation of the order dated 3-10-2005. The applicants were allowed to be impleaded.

While hearing the arguments for vacation of the order dated 3-10-2005 to conduct elections, the court clearly opined that the elections were last held in July 2000, and under Article 243 E of the Constitution, the Panchayat elected in the year 2000 will continue for five years from the date appointed for its first meeting and no longer. Hence the court decided that there is no ground to vacate the order dated 3-10-2005 which, if vacated would result in staying the elections which have already been directed to be held dependent upon the aftereffect of this appeal. From the above judgment it is evident that the courts are very stringent in following the Constitutional provisions and in conducting local body elections as per the Constitutional mandate. In the case stated below, the constitutionality of the amended provision of the Kerala Panchayat Act was tested through a writ petition under Article 226 of the Indian Constitution.

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<sup>13</sup> Karnataka State Election Commission v. H.C. Yatheesh Kumar and others (2006) 9 SCC 181

<sup>14</sup> Article 243 E of the Indian Constitution

## **NATURE OF ELECTION DISPUTES AND THE APPROVAL OF THE COURT**

Election related cases can be of different kinds, predominantly, it can be related to contesting and winning or losing the elections. Secondly, it can be related to disqualification of the candidate and thirdly it can be the procedures related to elections. Besides there are cases related to recounting of votes. Recounting can be requested only after the election results are declared and not before the election results are declared. The solitary cure accessible is the election petition. The court is bound to consider the plea and where case is made out, it may direct recount depending upon the evidence produced by the parties. The following case law is a typical one decided by the Supreme Court.

In *Sohan Lal v. Babu Gandhi and others*<sup>15</sup>, the admissibility of an election petition for recounting was considered. On 20<sup>th</sup> of January 2000 the election for the post of President, Gram Panchayat, Ringnodia, Indore was held. After the checking of the votes, the Appellant was orally educated that he had won the elections. However when the result was declared officially, Respondent No.1 was declared to have won. At this stage, he was unable to have moved toward the returning official for describe. The lone, cure, accordingly, accessible to the appealing party was to file an election petition. There is no provision in the Act or under the rules prohibiting the court or tribunal to direct a recounting of votes. Indeed, even in any case a gathering may not realize that the relating is important till after outcome is announced. At this stage, it would not able for him to apply for recounting to the returning officer. His lone cure is to file an election petition. In such case, the court or tribunal is bound to consider the plea and where case is made out it may direct recount depending upon the evidence produced by the parties.

In the present case, there was an error in declaring the election result. Therefore, it was held that the rule laid down in *Ram Rati's case*<sup>16</sup> is not correct. In *Ram Rati's case* it was held that it is must for the election petitioner to file an application for recounting of votes before the Returning Officer in terms of election rules. In view of this, the decision of the high court cannot be sustained and is, therefore, set side. As the petition was disposed of only on the basis of *Ram Rati's case*, the high court has not dealt with other points raised in the writ petition.

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<sup>15</sup> AIR 2003 SC 320

<sup>16</sup> *Ram Rati V. Saroj Devi*, (1997) 6 SCC 66

Therefore, the court directed to restore the writ petitions to the file of the high court. The high court will decide the similar on merits.

The appellant submitted that before the high court committed an error in passing the impugned order purporting on the basis of the decision of this court in *Ram Rati v. Saroj Devi*<sup>17</sup> wherein it has been held that it is mandatory for the election petitioner to file recounting application of votes before the Returning Officer in terms of the election rules, although the same has since been overruled by a three-judges bench of this court in *Sohan Lal v. Babu Gandhi*<sup>18</sup>. In this context it is pertinent to analyse the relevant statutory provisions.

### **STATUTORY PROVISIONS:**

Section 140 of the Bihar Panchayat Raj Act, 1993 mandates that the election of President shall be called in question by way of an election petition only and not in any other form.

The law with regard to re-counting of votes is now only well settled. The provisions of the Act and Rules framed thereunder provide that in relation to an election petition the provisions of the Code of Civil Procedure would apply. So the election petition contain concise statement of material facts. It is well settled that the question as to what would constitute material facts would depend upon the facts and circumstances of each case. The court further said that the principle as regards the nature of the statute must be determined having regard to the purpose and object of the statute seeks to achieve as stated in *P.T. Rajan v. T.P.M. Sahir*<sup>19</sup>. The court came to a conclusion that the judgment of the high court does not call for any interference. The appeals and the contempt petition are accordingly dismissed.

During the Panchayat elections in case there is doubt over number of votes cast and number of votes counted, and they are not tallied, the prescribed authority has the power to order for recount of votes. This was clearly stated by the Supreme Court in *Phoolmati v. Kalawati and another*<sup>20</sup>. In this case the elections were held for the Gram Panchayat President in District Azamgarh, village Barjals and Tehsil Sagari. The result was declared and the First Respondent was declared elected defeating the appellant by four votes. The appellant filed an election

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<sup>17</sup> *Ram Rati V. Supra* p.11

<sup>18</sup> AIR 2003 SC 320

<sup>19</sup> (2003) 8 SCC 498

<sup>20</sup> (2004) SCC 724

petitionin with several grounds were taken including the ground that persons who have voted were in factwhere either dead of not present. The election petition was then amended and it was contended that the counting officer had not counted all the votes, that invalid votes had been counted and thatthe valid votes of the appellant had been counted along with the invalid votes.

Further the appellant prayed that the ballot papers should be tallied and counted in the open court in the presence of the parties. The court ordered for tallying and perusal of the evidence only, after which it can be concluded whether recounting is essential or not. The tallying was doneand there was a discrepancy in the total number of ballot papers found. The recounting was done and it was found that the appellant has got more votes than the respondent and the prescribed authority being the District Magistrate, declared the appellant as legally elected. In the Baldev Singh v. Shinder Pal Singh case<sup>21</sup> decided by the Supreme Court, the court explained that a re- counting should not ordinarily be directed and there exists certain limitation in this behalf.

### **JUDICIAL RESPONSE – PROCEDURAL ASPECTS**

In V.S. Shabeer v. P.A. Niamathulla case the main<sup>22</sup> contention was related to procedural aspects related to election process. The Supreme Court thoroughly analysed the procedural aspectsrelated to who can accept the nomination paper of the candidates and matters related to taking oathbefore the Returning officer.

The appellant and the respondent were the candidates who contested the election form Alangad Block Panchayat, in the state of kerala. The appellant was declared elected. The candidatewho lost the election (respondent herein) challenged the election by way of an election petition before the election tribunal mainly on two grounds, it was contended that the official who acknowledged the designation papers of the appealing party had no power to get something very similar and besides the litigant had not committed to or bought in a promise or attestation before the Returning officer or any other person authorized by the state election commission and therefore, he was not qualified to file a seat. The election petition was gone against on the groundthat the election petition appeal was not viable and that it was documented after the expiry of the time of limit.

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<sup>21</sup> (2007) 1 SCC 341

<sup>22</sup> (2008) 10 SCC 295

## **CONCLUSION AND SUGGESTIONS**

India still lives in villages and the focus of development strategy should be on rural development in terms of institutions, infrastructure and investment and the people or more particularly, the Gram Sabha should be the watchdog. The bureaucratic model of development based on statistical data and graphs has not helped the country much but has only added to mismanagement of resources. Its time power got transferred to the people so that new strategies of development can be adopted.

Panchayats are for prosperity, social equity, social justice, and people participation. Economic activities have to be accelerated. Social justice has to be administered. Women folk have to be emancipated. Planning process has to be initiated from below. Peoples participation has to be ensured from planning and decision making process to evaluation of schemes, programmes and activities for development. The belief system of the people that government is a provider has to be changed. To perform all the above responsibilities, there are various activities that are to be initiated and changes that are to be brought in. The following are some of the suggestions and recommendations that are suggested by the researcher for the better functioning of the Panchayat Raj Institutions.

## **FINDINGS**

The hypothesis of the present study is tested on the basis of above findings of the study which clearly demonstrates the inadequacy of the existing constitutional and statutory provisions to enable the Panchayati Raj Institutions to serve as units of local self-governments. The findings of the study reveal that there is necessity for further strengthening the Panchayat raj Institutions to be more effective. There is the difference between the theory and practice related to devolving power to the Panchayat Raj Institutions.

The success of Panchayati Raj institutions would depend on the will of the political and administrative elite to decentralize real power at the Grassroots level. Yet people's participation is one of the main ingredients of democracy. People's participation is a tool that will make this governance possible. Participation in the Panchayat Raj Institutions is limited to elected representatives and the people in general do not evince any interest in Panchayat Raj Institutions. The major challenge before the Panchayat Raj Institutions is the basic

question of implementation. These challenges affect the panchayat raj. Running parallel organizations to the growth of panchayat Raj institutions does scuttle the democratic initiation of the panchayat. The task becomes more difficult when most of the men and women elected to the Panchayat Raj Institution in all three tiers are illiterate. They are either totally ignorant or are partially aware of what the 73<sup>rd</sup> Constitutional Amendment is all about. Lack of trained manpower is also one of the difficulties faced by the elected representatives.

Political impact on the panchayat affect the self-sufficiency of the panchayat raj. Panchayat leader should be equipped in the author of planning, execution, monitoring and evaluation of schemes as Mahatma Gandhi gathered the people for the freedom struggle of India from the clutches of foreign power we have together the masses from depression from the Chief clash of poverty and ignorance that task before us is very difficult it is a joint responsibility of both the government at the centre and the state elected representatives of local Self-government voluntary organisation of the service minded individuals to use in an era of Purna Swaraj.

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