

## **ROLE OF PANCHAYATI RAJ INSTITUTIONS IN THE PROTECTION OF ENVIRONMENT**

**T. R. Subramanya\* and Shuvro Prosun Sarker\*\***

### **ABSTRACT**

*The paper makes an attempt to evaluate the role of Panchayati Raj Institutions (PRIs) in the protection of environment. This article comes as a narrative of relevant policies and practices facilitated by the PRIs under the 73<sup>rd</sup> Amendment for protecting environment. Practices relating to environmental education, awareness and training, arranging manpower and training them, mobilising awareness, forming eco-clubs in schools, identifying NGOs involved in similar cases are some of those. The paper argues that a minimum utilisation of these practices may help villages reach the heights of success in several aspects of cleanliness and environmental protection. A complete orchestration of all the policies would be fundamental in changing the future of local self-governance in relation to environmental protection. The paper employs descriptive methods to draw inferences from the initial findings.*

\* Research Fellow and Coordinator, Centre for Regulatory Studies, Governance and Public Policy, West Bengal National University of Juridical Sciences, Kolkata. Email-id: [tr.subramanya@gmail.com](mailto:tr.subramanya@gmail.com)

\*\* Research Associate (Law), Centre for Regulatory Studies, Governance and Public Policy, West Bengal National University of Juridical Sciences, Kolkata. E-mail id: [shuvro@nujs.edu](mailto:shuvro@nujs.edu)

## 1. INTRODUCTION

Panchayati Raj Institutions (PRIs) were introduced in India vide the 73<sup>rd</sup> Amendment of the Constitution to focus on sectors such as rural development, participatory planning, etc., which were ignored at the initial phases of development planning. Recognising the interlink between the rural masses and environment, a decentralised natural resource management to be maintained by the PRIs was also provisioned.<sup>1</sup> The Ministry of Rural Development, which is the nodal ministry for the implementation of the 73<sup>rd</sup> Amendment, has been highly successful in states such as Kerala, Karnataka, etc., where it has been able to set up task forces which are working towards setting up several projects and programmes to combat with environmental issues. The Planning Commission had also come up with task forces which would help the PRIs avail funds, implement centrally sponsored schemes as well as externally aided schemes. Complete Cleanliness Mission is one of the latest agendas of the Government under the ambit of the PRIs which was introduced in 2012. The Government is aware that rural environment can only be developed once the people are educated about proper values and utilisation of the environment and, therefore, in order to promote the same, the Panchayati Raj also bestows several responsibilities on the citizens to oversee the successful completion of several such missions which require people to work actively for the betterment of the environment.<sup>2</sup> Gram Panchayats are also empowered with the capacity to determine not only the convergence of such programmes but also whether such programmes would help improve the general environment of the surrounding habitat under the rule of such Panchayats. Some notable improvements and contributions in this section include the introduction of cyclone- and earthquake-proof houses and a leap towards the use of smokeless apparatus for cooking, etc. Health and welfare research programmes were also considered to be under the wing of such PRIs where the environmental factors responsible for the spread of vector-borne diseases were to be put under severe check. At the same time, the use of insecticide and pesticide in various regions were also to be controlled. Worried about the sudden increase in urbanisation, the PRIs were bestowed with the duty of maintaining the environment and forest as a specific head in itself.<sup>3</sup>

---

<sup>1</sup> Executive Summary, *Panchayati Raj and Natural Resource Management post-73rd Amendment: Institutional Issues and Future Strategies*, The Energy and Resource Institute, 2007, available at [http://www.teriin.org/index.php?option=com\\_completed&task=details&pcode=2004RE21](http://www.teriin.org/index.php?option=com_completed&task=details&pcode=2004RE21)

<sup>2</sup> A. K. Mishra (et. all), Role of the Panchayati Raj in Rural Development (An Analytical Study of Uttar Pradesh), *Management Insight*, Vol. 7, No. 1, 2011, p. 47

<sup>3</sup> For details see *Report of the Task Force on Panchayati Raj Institutions*, Planning Commission, New Delhi, 2001.

The Environmental Audit and other systems are also required to be closely monitored by the PRIs in order to ensure the proper feedback of such measures. It was further urged that the State Pollution Control Boards also try to include the local self-governments in all spheres of decision-making which would include preparation of maps, compilation of pollution data of air, water, soil, etc. This would mean that the technocratic data would not only be vetted by the people's representatives but also would have highly developed chances of drawing suggestions and changes akin to certain regions which might have eluded the policy makers due to obvious reasons of unawareness of the terrain, climate, geography, etc.<sup>4</sup> This prompted measures such as public hearing, PRI hearing in environmental impact assessment issues to not only protect the rights of the potential victims but also encourage organised groups at local levels in protecting environment.<sup>5</sup>

In 2010, the Ministry of Rural Development along with the Ministry of Environment and Forests came up with a new initiative under which The Joint Forest Management Committees in scheduled areas of nine states were agreed to be shifted to the authority of the Gram Sabhas/Gram Panchayats. It was further agreed that while implementing the provisions of the Wildlife Protection Act, 1972, issues such as declaration and relocation of sanctuaries, etc., should be carried out after a transparent discussion with the Panchayat bodies.<sup>6</sup> These initiatives reflect the extensive role that the PRIs have assumed in protecting environment.

Soon after the creation of such institutes, the judicial setup had also turned its attention to the degrading situation of environment in India and by 1996, the Supreme Court had started combining judicial oversight and executive accountability.<sup>7</sup> Several states initiated steps to close down or shift factories which were involved in the production of hazardous chemicals. In 1995, the Court recognised the fact that environment included both hygienic atmosphere and ecological balance and one such success story of the state of Kerala also reflects the same.<sup>8</sup> Peoples' movement for total sanitation initiated by the Panchayat of Pilocode drew laurels from all over. A baseline survey squad combined with several meetings

---

<sup>4</sup> Ibid, p. 41

<sup>5</sup> Ibid, p. 43

<sup>6</sup> Ibid, p. 45

<sup>7</sup> K. Sivaramakrishnan, Environment, Law, and Democracy in India, *The Journal of Asian Studies*, Vol. 70, No. 4, 2011, pp. 905-928

<sup>8</sup> *Virender Gaur vs. State of Haryana*, Appeal (civil) 9151 of 1994, Date of Judgment: 24-11-1994

of NGOs, political parties, voluntary organisations, cultural organisations along with women's forum was all that was required to achieve complete success. Awarded the Swaraj Trophy for the best Gram Panchayat at the state level, as of now, this village boasts of excellent cleanliness with no open defecation or garbage dumping.<sup>9</sup>

Such a story is not an exception but a proper utilisation of all the policies and provisions extended to the PRIs under the 73<sup>rd</sup> Amendment. As per the reports of the Task Force and Planning Commission, the Scheme relating to Environmental Education, Awareness and Training involves development of materials, arranging manpower, training them, mobilising awareness, forming eco-clubs in schools, identifying NGOs involved in similar cases among several others. A bare minimum utilisation of the suggestions had helped villages reach the heights of success in several aspects of cleanliness and environmental protection. A complete orchestration of all the policies would be fundamental in changing the future of Local Self-Government as well as India in its entirety.

## 2. WATER CONSERVATION

With a recent turn of attention towards conservation of water and facilitation of safe drinking water and its availability for sanitation purposes, water conservation assumes one of the mammoth issues that need to be taken care of by the PRIs. In a recent announcement, to curb water-related issues, the district authority in Sirisa had also announced to award village Panchayats that work towards conserving drinking water.<sup>10</sup> Perpetual availability of drinking water and quality of drinking water are two major issues that have affected various Gram Panchayats varying with factors such as population, location of Gram Panchayat or different habitations within the Gram Panchayat, season, monsoons, etc.<sup>11</sup> Such PRIs are no doubt introduced for the benefit of the local people, however, their responsibilities are stretched far and beyond. Regarding water conservation, the respective roles of the Gram Panchayats include:

---

<sup>9</sup> *Success Story of Pilocode Gram Panchayat Kerala- An Award Winner of First Nirmal Gram Puraskar: A People's Movement for Total Sanitation*, available at [http://www.mdws.gov.in/sites/default/files/pilocode\\_kerala.pdf](http://www.mdws.gov.in/sites/default/files/pilocode_kerala.pdf)

<sup>10</sup> Sushil Manav, *Panchayats to be Rewarded for Water Conservation*, The Tribune, January 15, 2015, available at <http://www.tribuneindia.com/news/haryana/community/panchayats-to-be-rewarded-for-water-conservation/29703.html>

<sup>11</sup> *Gram Panchayat and Drinking Water: Elementary Resource Material for Elected Representatives and Functionaries of Gram Panchayats*, Ministry of Panchayati Raj, 2014, available at [http://www.panchayat.gov.in/documents/10198/456811/water%20-%2028\\_08.pdf](http://www.panchayat.gov.in/documents/10198/456811/water%20-%2028_08.pdf)

- Forming, nurturing and strengthening institutions (standing committees /sub-committees/ department committees) to undertake different issues and challenges related to water.
- Broad basing water-related decision-making through active participation in Gram Sabhas. Arranging and conducting Gram Sabha for taking important decisions.
- Creating and maintaining ownership of every citizen of the Gram Panchayat over water resources by involving them in decision-making.
- Protection/conservation of water bodies from encroachment.<sup>12</sup>

The 11<sup>th</sup> Schedule of the Constitution enumerates 29 functions that can be delegated to the PRIs, out of which several are very closely associated to availability of water such as agriculture, irrigation, fisheries, animal husbandry, etc. Watershed development projects flagged under the PRIs have become one of the most important initiatives of such conservation. Yet there is only a limited role of the PRIs in such projects. One of the major reasons for that is the increasing number of Centrally Sponsored Schemes, which have reduced the PRIs to a mere implementing body rather than a decision-making body. This is to be kept in mind that India boasts of diversity in terms of terrain, geography and climate which is why a Centrally Sponsored Scheme that has been successful in one certain region might not yield the same result everywhere and such projects might entirely fall through. Improper allocation of funds, regulatory control over the functions defined for the Panchayats, reluctance of several authorities and institutions to include the PRIs, lack of women empowerment, political and power struggle, question regarding the credibility of the PRIs also feature as issues in the implementation of a successful water conservation programme.<sup>13</sup>

Management of the rural water supply system cannot be seen as an option or choice between the state government and the Gram Panchayat. It is a cardinal approach towards a management system wherein a full collaboration between the government and Gram Panchayat is achieved. The state government as well as the Gram Panchayat have clearly

---

<sup>12</sup> *Water Resources in Gram Panchayats: Active Panchayat Book- VI*, Ministry of Panchayati Raj, 2017, available at <http://www.panchayat.gov.in/documents/10198/3171935/Water%20-%20English%20-%20Inside.pdf>

<sup>13</sup> Nupur Tiwari, Centrality of Panchayati Raj in Water Conservation and Management, *Journal of Soil and Water Conservation*, Vol. 7, No. 3, 2008, pp. 41- 48

defined and established roles that are separate from one another. It is essential that each of them understand and accept the same.<sup>14</sup> It is important to realise that water conservation is not anything new for rural communities. It has been a long traditional practice in India where villages have adopted various measures to meet the water scarcity challenges. The persistent problems currently are lack of collective effort and un-participatory approaches to water conservation and use.<sup>15</sup>

The onus and responsibility of the PRIs is to act as good facilitators and ensure the following:<sup>16</sup>

- Make the water conservation programme a people's programme, which will include women, marginalised communities and all households of the Gram Panchayat;
- Reach out to people and generate their interest to participate in the project activities;
- Ensure representation of the people in decision-making processes and facilitate them in taking decisions through building village institutions;
- Ensure transparency and openness in decision-making and in financial matters;
- Reach out to departments and their functionaries for convergence and technical support;
- Include water resources planning as a component of Annual Gram Panchayat Development Planning;
- Plan for water resources; make budgetary provisions.

Another essential situation that has largely been ignored is ensuring adequate drinking water services during natural disasters. During natural disasters, people often leave their houses, and even at home, have inadequate access to safe drinking water. The role of Gram Panchayat covers:<sup>17</sup>

- Pre-disaster steps - steps to be taken when a disaster is anticipated (preparedness)
- During disaster - steps to be taken when the disaster actually takes place
- After disaster - corrective steps to be taken after the disaster.

---

<sup>14</sup> See supra note 11

<sup>15</sup> See supra note 12

<sup>16</sup> Since most of the domestic water needs are managed by women, their participation in planning and implementing of rural water supply schemes and in ensuring quality checks needs to be ensured. The understanding of women on quality aspects needs to be focused upon; See *ibid* p. 38

<sup>17</sup> See supra note 11, p. 44

To develop successful water conservation plan there are three essential rules to be followed. First, including the states, PRIs and other institutions must respect that the fundamental rights and the creation of rural and urban local bodies are non-negotiable, mandatory, and enforceable under the Constitution. Second, details of the water supply function that are taken out of parastatal agencies, water boards, etc., the accountability for the service remains with the Panchayats/municipalities is to be worked out by the state governments. Third, in any situation, both the water supply and sewerage boards as well as municipal corporations/councils are 'State' within the meaning of Article 12 of the Constitution of India and are as of today duty-bearers obliged to honour the fundamental right to water of every person.<sup>18</sup>

Till date, only a few States in India have specifically enacted groundwater legislation. Moreover, these laws are applicable in restricted areas, have limited purposes and generally suffer from non-implementation issues. Most tend to include:

- restriction of the depth of wells/bore wells/tube wells, and
- declaration of groundwater conservation and protection zones, especially around sources of drinking water.<sup>19</sup>

Generally, the implementation of these forms of conservative measures previously rested with the District Collector with no specific role therein for community-level institutions. The new laws of the decade retain all these basic features. Two critical cross-cutting points from the various state groundwater laws deserve close appreciation.<sup>20</sup> West Bengal is one of the few states that has a limited policy such as provisions requiring the State Level Authority to 'organise people's participation and involvement in planning and actual management of ground water resources'. In fact, in 1999 a Working Group on Legal, Institutional, and Financing Aspects constituted by the Union Ministry of Water Resources, while referring to the context of widespread alienation with the 'Command and Control' mechanism under the Central Model Groundwater law suggested that the best option is to

---

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

<sup>20</sup> Videh Upadhyay, Water Rights and the 'New' Water Laws in India Emerging Issues and Concerns in a Rights Based Perspective, *India Infrastructure Report*, 2011, p. 64, available at <https://www.idfc.com/pdf/report/2011/Chp-5-Water-Rights-And-The-New-Water-Laws-In-India.pdf>

introduce participatory processes in groundwater management in which the role of the state could be that of a facilitator and the role of the user organisation or Panchayat as that of an implementing regulatory agency.<sup>21</sup>

### 3. Forest Conservation and Development

It is now established that PRIs have the legal backing of the Constitution of India while Joint Forest Management Committees (JFMC) do not. Therefore, mere advisory reforms from the Central Government cannot resolve the conflict of interests between JFMCs and PRIs. Also, the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 known as Forest Rights Act created further complications due to the provisions where forest dwelling communities will exercise the community forest rights to protect, regenerate, and conserve Community Forest Resources further broadened the conflict between JFMCs and Gram Sabhas. The decision of the Government empowering Gram Sabhas with the ownership of minor forest produce (MFP) and right to protect, regenerate and conserve community forest resources have resulted in JFMCs and Gram Sabhas having overlapping jurisdictions on forests. The Central Government has also issued an advisory to the State Governments in 2011 to put the JFMCs under the Gram Sabha. Since the Gram Sabhas do not have a legal tool for the protection of forests, therefore, the 2006 Act authorizes Gram Sabha to take assistance from any government department. It also lacks capacity to conserve and manage forests scientifically, in spite of having traditional knowledge only.<sup>22</sup> There exist serious concerns that both the Biodiversity Act and Rules do not reflect for instance the empowerment of indigenous and local communities in the conservation of biodiversity mandated by the Conservation of Bio Diversity. It has been expressed numerous times that the role of Biodiversity Management Committees (BMCs) defined in the Biodiversity Rules are a complete comedown from what was envisaged in the Biodiversity Act, which itself had its own set of problems. One of the most critical problems is that the “the definition of local body is problematic, as it leaves out gram sabha or other village assemblies. Since the local body (commonly understood as only the elected representatives) has to appoint/select the BMC, the political affiliation and relationship between a village and the Panchayat body will play an important role in the

---

<sup>21</sup> *ibid*

<sup>22</sup> See J V Sharma and Priyanka Kohli, *Forest Governance and Implementation of REDD+ in India*, The Energy and Resources Institute, available at <http://www.moef.nic.in/sites/default/files/redd-bk1.pdf>

constitution and functioning of the BMC.”<sup>23</sup> It has been suggested on numerous occasions by the Government that the Biodiversity Register concept that was suggested should be truly made a Peoples’ Biodiversity Register. This can be only achieved if local communities are empowered to declare genetically sensitive and important resources, and also express their view upon scientific views. The BMCs constituted by the Panchayats need to be given the clear responsibility to compile and maintain the register, and also oversee the depletion and extinction of species. Joint Forest Management and Watershed Development from 1990 onwards is a good example of a sustained effort at testing the efficacy of different institutions with respect to GO-NGO collaboration. Several institutions have been involved in these programmes.<sup>24</sup>

The following major concerns relevant during implementation which have found mention in several government circulars and policy recommendations are:

- Ethical issue on transferring genetic material.
- Consultation process with the local communities.
- It is also important to address the problem of a large number of parallel sectoral committees.
- Access and sharing benefits from the use of local biological resources (it’s not just forests which harbour biodiversity) and genetic material, particularly traditional knowledge.
- The Panchayats are constitutionally appointed bodies to manage resources at the village level. While they act as a watch-dog on depletion and extinction of species, it is the Gram Sabhas of hamlets or groups of hamlets within Panchayats who must be mandated to select members of their respective BMCs.
- There is a need to bridge the gap between the market and non-market prices of forest products, while negotiating trade on forest products.
- The gap in knowledge about their value added utilities and traditional selective uses should be examined by Specially Empowered valuation committees set up for different regions within the Biological Diversity Authority.

---

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

- The Committee should ensure that local communities receive the market prices. The market price itself should be based on sustainable rates of extraction, land use and water resource availability.<sup>25</sup>

Conclusively, it can be stated that Biodiversity conservation can be both more effective and less resource consuming if stakeholders are involved in a meaningful way in the management of the biodiversity rich areas.<sup>26</sup> The Eleventh Five Year Plan of the Task Force on Social and Economic Aspects of Conservation for the Environment and Forests Sector had also suggested out several forms of policies to be implemented for the betterment of such PRIs and their functioning in Forest Conservation and management:

1. Action is required on three broad fronts: (i) putting in place well considered legislations and/or complementary arrangements that would protect and help address the needs of the holders of traditional knowledge, (ii) establishing the institutional structure needed for effectively implementing the legislations, and (iii) increasing coordination between the different actors who have an interest in traditional knowledge, including communities, commercial interests, civil society groups and the policy makers.
2. Making participation by local communities more effective during the implementation of the Biodiversity Act.
3. Establishing the institutional structure for ensuring fair and equitable sharing of benefits arising out of the commercial exploitation of knowledge related to biodiversity.
4. Consistent set of views needs to be developed with the utmost urgency as regards protection of traditional knowledge. Stakeholder dialogue needs to be initiated to ascertain whether or not conventional forms of intellectual property rights, in particular patents, would be the ideal way to approach the problem at hand.
5. Making Farmers Rights work effectively by setting out appropriate rules for the implementation of the Plant Breeders and Farmers Rights Act.
6. Review all participatory management efforts carefully to see that they do not perpetuate inbuilt asymmetries of power by setting up new committees. Rather,

---

<sup>25</sup> *ibid*

<sup>26</sup> *Report of Working Group on Forests, Eleventh Five Year Plan (2007-2012), Planning Commission, 2006.*

existing structures in the form of Gram Sabhas, local communities and PRIs should be used to ensure participation.

7. Reviewing various legislations, enacted both by the Central Government and different State Governments, with a view to amending those that may undermine the rights of the traditional communities over the resources they have been using.
8. Delineation of the rights and responsibilities of the different tiers of governance on the issue of biodiversity conservation.<sup>27</sup>

National parks and protected areas have been recognized as playing a crucial role in conserving biodiversity. Any attempt at wildlife conservation must come to terms with the harsh reality of rapidly increasing human populations living below the poverty line. Wildlife conservation going up against the livelihood of local communities, must see the latter usually lose. Local communities complain that their interests and values are pushed aside and preference is given to wildlife protection. Two laws introduced by the Government to change the pattern of forest governance were: the Panchayat (Extension to Scheduled Areas) or PESA Act, 1996; and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Statistics reflect that their achievements are highly limited, especially in protected areas. Studies further show that the Panchayat (Extension to Scheduled Areas) Act, 1996 has failed to support the sustainable use and management of forest resources (especially NTFP) for the livelihood of rural communities. The Indian Forest Act, 1927 saw the establishment of a forest department and was tasked with producing timber, establishing conservations and plantations to secure future timber supplies, and, generally to a lesser extent, providing for villagers' subsistence needs.

The Forest Rights Act has been successful in creating an opportunity for local communities to secure the right to access forests, and to set out a rights-based framework for conservation and natural resource governance. Already, several villages have forest protection groups, and well developed rules and regulations for protecting forests and using resources sustainably. They are also implementing plans to chalk out community biodiversity management plans to protect and use forest resources and biodiversity sustainably.<sup>28</sup>

---

<sup>27</sup> *ibid*

<sup>28</sup> Tapas Kumar Sarangi, Contextualising the Conflict between Livelihood and Conservation: Implementation of FRA 2006 in Odisha, available at [http://www.nird.org.in/nird\\_docs/srsc/srsc230217-20.pdf](http://www.nird.org.in/nird_docs/srsc/srsc230217-20.pdf)

#### 4. Waste Management

To promote sanitation across the country, the Centre has been keen on prioritizing waste management as a prime focus and has conducted training programmes for all Panchayat members across the country.<sup>29</sup> One of the basic services to be rendered by the PRIs involves solid and liquid management. It has been suggested that the PRIs pay special attention to the Agricultural sector where utilisation of Wasteland to be developed into grassland or cultivable lands or orchards must be promoted. Waste management itself is an important section that has gained mainstay in the policies of the PRIs and the Swachh Bharat Mission was rolled out in the wake of the same. The Government of India (GoI) through the Ministry of Drinking Water and Sanitation (MDWS) has geared up the initiatives to facilitate such a process. Handbooks and Field Manuals have been introduced for Gram Panchayats for implementation of a successful management programme.<sup>30</sup> The Solid Waste Management Rules, 2016 has provided a regulatory framework for management of solid waste in all areas.<sup>31</sup> Solid and Liquid Waste Management is one of the key components of any sanitation initiative which is rightly emphasized and focused in Swachh Bharat Abhiyan programme. The main aim has been to implement an effective Solid and Liquid Waste Management by the year 2022.<sup>32</sup> The Central Government as well as many State governments are looking up to Gram Panchayats to implement a working system to manage solid waste in rural areas. Reports suggest that some Gram Panchayats have been successful in managing solid waste, while many others have not been that successful. The NIRD&PR “took up the task of collecting and coming up with an array of practicable models of solid waste management, which GPs can choose from, and take up appropriately for implementation.”<sup>33</sup>

The Government has revamped the Municipal Solid Wastes (Management and Handling) Rules 2000 and notified the new Solid Waste Management Rules, 2016 which are applicable to every urban local body (Mega city to Panchayat level), outgrowths in urban

---

<sup>29</sup> *Centre Mulls Training for Panchayat Members in Waste Management*, The Hindu Business Line, November 03, 2016, available at <http://www.thehindubusinessline.com/news/national/centre-mulls-training-for-panchayat-members-in-waste-management/article9301302.ece>

<sup>30</sup> *Solid Waste Management in Rural Areas A Step-by-Step Guide for Gram Panchayats: A Companion to The Facilitators of Swachh Bharat Mission (Gramin)*, National Institute of Rural Development and Panchayati Raj, 2016, available at [http://www.nird.org.in/nird\\_docs/sb/doc5.pdf](http://www.nird.org.in/nird_docs/sb/doc5.pdf)

<sup>31</sup> Government of West Bengal, Panchayats & Rural Development Department, Notification, Memo No. 853/RD/pH&s/s/2c -tlz01 6(Part-II)

<sup>32</sup> *Proposal for Solid and Liquid Waste Management in Rural Areas Swachh Bharath Mission*, Government of Karnataka, available at <http://idfoi.nic.in/cms/uploads/projects/231.pdf>

<sup>33</sup> See supra note 30

agglomerations, census towns as declared by the Registrar General and Census Commissioner of India, notified areas, notified industrial townships, areas under the control of Indian Railways, airports/ airbases, ports and harbours, defence establishments, special economic zones, State and Central government organisations, places of pilgrims, religious and historical importance as may be notified by respective State government from time to time and every domestic, institutional, commercial and any other non residential solid waste generator situated in the areas.<sup>34</sup> There has also been laid down duties of Waste generators and Authorities which state:<sup>35</sup>

- Every Waste Generators shall segregate waste and store separately and hand over to Municipal workers or authorized waste pickers.
- Ministry of Environment, Forest & Climate Change shall constitute 'Central Monitoring Committee' to monitor and review every year.
- Ministry of Urban Development shall frame National Policy on Solid Waste Management and coordinate with States/UTs, provide technical guidelines, financial support, training to local bodies, etc.
- Departments of Fertilizers & Chemicals shall assist in market development for city compost and make available to companies (3/4 bags compost: 6/7 bags Fertilizers).
- Ministry of Agriculture shall make flexible Fertilizer Control Order, promote utilization of compost, testing facility for compost and issue guidelines.
- Ministry of Power shall fix tariff of power generation from W-T-E project and ensure distribution through companies.
- MNRE shall facilitate infrastructure for waste-to-Energy plants and provide subsidy.
- District Collector/Magistrate shall facilitate identification of landfill site, quarterly review the performance of local bodies.
- CPCB shall coordinate with SPCBs/PCCs for monitoring and Annual Reports, formulation of standards, review new technologies, prepare guidelines for buffer zones restricting from residential, commercial and construction activities areas; and inter-state movement of waste.

---

<sup>34</sup> Solid Waste Management Rules, 2016

<sup>35</sup> Salient Features of Solid Waste Management Rules, 2016, available at [http://www.cpcb.nic.in/wast/municipalwast/Salient\\_features\\_SWM\\_Rules.pdf](http://www.cpcb.nic.in/wast/municipalwast/Salient_features_SWM_Rules.pdf)

- Local Authority/Panchayats shall prepare SWM plan with time line and its implementation, segregate, adopt 3-Rs, material recovery, processing/ disposal of Waste, user fee and levy spot fine.
- SPCBs/PCCs shall monitor, issue authorization and regulate.
- Manufacturers/Brand owners shall facilitate collect back wastes of their products and provide pouch for packaging sanitary wastes, etc.
- Industry (cement, power plant, etc.) shall use RDF within 100 km.
- Operator of facilities shall follow guidelines/standards

Besides the solid wastes disposal rules the Government also came out with Plastic Waste Management Rules, 2016. This is one of the major issues that has been plaguing rural India the most. New policies and changes were easily adopted into the Urban areas with options availed for much costlier products and urban awareness. However, it emerged as a tough challenge to implement the same in the Panchayati areas. Therefore the new rules implemented are the following:

- Rural areas have been brought in ambit of these Rules since the use plastic has affected rural areas as well. The responsibility of implementation of the rules is given to Gram Panchayat.
- For the first time the responsibility of waste generators is being introduced. Individual and bulk generators like offices, commercial establishments, industries are to segregate the plastic waste at source, handover segregated waste, pay user fee as per bye-laws of the local bodies.
- Plastic products are littered after the public events (marriage functions, religious gatherings, public meetings etc) held in open spaces. It is for the first time that persons organising such events have been made responsible for management of waste generated from these events.
- The use of plastic sheet for packaging, wrapping the commodity except those plastic sheet's thickness, which will impair the functionality of the product are brought under the ambit of these rules. A large number of commodities are being packed/wrapped in to plastic sheets and thereafter such sheets are left for littered. Provisions have been introduced to ensure their collection and channelization to authorized recycling facilities.

- Extended Producer Responsibility: Earlier, EPR was left to the discretion of the local bodies. For the first time, the producers (i.e. persons engaged in manufacture, or import of carry bags, multi-layered packaging and sheets or like and the persons using these for packaging or wrapping their products) and brand owners have been made responsible for collecting waste generated from their products. They have to approach local bodies for formulation of plan/system for the plastic waste management within the prescribed timeframe.
- SPCBs will not grant/renew registration of plastic bags, or multi-layered packaging unless the producer proposes the action plan endorsed by the concerned State Development Department.
- Producers to keep a record of their vendors to whom they have supplied raw materials for manufacturing carry bags, plastic sheets, and multi-layered packaging. This is to curb manufacturing of these products in unorganized sector.
- The entry points of plastic bags/plastic sheets/multi-layered packaging in to commodity supply chain are primarily the retailers and street vendors. They have been assigned the responsibility of not providing the commodities in plastic bags/plastic sheets/multi-layered packaging which do not conform to these rules. Otherwise, they will have to pay the fine.
- Plastic carry bag will be available only with shopkeepers/street vendors pre-registered with local bodies on payment of certain registration fee. The amount collected as registration fee by local bodies is to be used for waste management.
- CPCB has been mandated to formulate the guidelines for thermoset plastic (plastic difficult to recycle). In the earlier Rules, there was no specific provision for such type of plastic.
- Manufacturing and use of non-recyclable multi-layered plastic to be phased in two years.<sup>36</sup>

---

<sup>36</sup> Plastic Waste Management Rules, 2016, available at <http://pibphoto.nic.in/documents/rlink/2016/mar/p201631801.pdf>

## 5. Mines and Minerals

The central government had asked the Finance Commission to recommend the quantum of funds to be devolved to the local bodies from the Tenth Financial Commission and onwards. The major sources for which the local bodies were assigned such shares were from lease amount of mines and minerals. Previously the same was with Revenue Department but it was subsequently entrusted to the Department of Geology and Mining.<sup>37</sup> One of the most comprehensive guidelines on implementation of Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA Act) were issued on 21<sup>st</sup> May 2010 which included advice to the States to: Amend laws, rules, executive instructions on mines & minerals, MFP, excise, money lending, etc.<sup>38</sup> In PESA, the devolution to the Panchayats state that prior permission of the Panchayat or the Gram Sabha at the appropriate level shall be mandatory for the grant of prospecting license or mining lease for minor minerals. Some states give primacy to Gram Sabha rather than Panchayats while others have omitted the Gram Sabha altogether. An initiative for the set up of Harmonization Committee has also been introduced at various levels so as to combat the inconsistencies with the central and the state Acts. Initially what used to be the biggest threat for the indigenous people was the encroachment on their lands and other secondary rights in the wake of mega mine project under the head of national interest. Absence of policies like Environmental Impact Assessment and public hearing before such mining plans also complicates the already precarious situation and calls for greater participation of the PRIs in such initiatives. Extension of PESA Act in consideration to Part IX of the Constitution also lays to rest some of the glaring issues in this context where GS and Panchayats are endowed with authority. The Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act), on suggestion of the Indian Law Institute also came up with changes to be incorporated to make it stronger on the rural front. Sections 4, 5 and 7 brought major changes that have been included along with Sections 11 and 13 which urge the Central Government to pay due attention to the objectives of the PESA act before implementing any new law or policies. Coal Bearing Areas Act finds a separate mention with regard to the wide spread availability of coals from such rural regions and it

---

<sup>37</sup> Panchayati Raj: Funds Release to Rural Local Bodies, Government of Tamil Nadu, available at <http://www.tnrd.gov.in/fundsrelease.htm>

<sup>38</sup> Guidelines by Ministry of Panchayati Raj, available at [http://pesadarpan.gov.in/en\\_US/rules](http://pesadarpan.gov.in/en_US/rules)

also upholds the same policies as previous acts about including all the concerned PRIs for consultation.

## 6. Response of Indian Judiciary on PRIs and Environment Protection

It can be argued that the National Green Tribunal, the Supreme Court of India and other High Courts have been keenly observing the implementation of the 73rd and 74th Amendment especially in the sector of protection of environment, water conservation, waste management and disposal etc. It is inspiring to see that even individuals now come up with complains in case the PRIs are found to slack off and simultaneously the PRIs have evolved to be one of the strongest pillars in protecting the environment at the village level. In the National Green Tribunal's Southern Zone Bench, reflecting the same spirit an arrest warrant was issued against the Secretary of Cheriya mundam Panchayath for not abiding by its order to take action for the protection of Tirur river.<sup>39</sup> The warrant has asked the District Police Chief to arrest the Secretary and produce him before the court on April 24. The secretary had not responded to several requests for a report on pollution in the Tirur-Ponnani river. The tribunal ordered the Panchayat to stop the dumping and diversion of hazardous waste to the river in September 2014. This is just one example of how the Indian judiciary has been working in recent years. There are several other such inspiring cases which have evolved to be the benchmarks in this sector.

In *B. Agarwal Stone Product Limited vs. State of U.P. and Ors.*, bye-laws were framed by the Zila Panchayat, Sonebhadra relating to levy of fee on tractor and truck used for collecting 'gitti', stones, boulders, 'surkhi', coal and coal dust from the mining areas situated within the rural areas of Zila Panchayat, Sonebhadra and transporting or storing the said minerals within or outside the district. Subsequently it was held that the bye-laws were beyond the purview and ambit of the provisions of the Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 and that such tax could not be imposed by the State Legislature.<sup>40</sup> The court delivered the Judgement stating that the view does not lay down the correct legal position. Section 142(1) of the Zila Panchayat Act read with Section 239(1) entitles the Zila Panchayat to frame bye-laws and levy the impugned fee. The court further

---

<sup>39</sup> National Green Tribunal Arrest Warrant for Cheriya mundam Panchayat Secretary, Deccan Chronicle, Mar 22, 2017, available at <http://www.deccanchronicle.com/nation/in-other-news/220317/national-green-tribunal-arrest-warrant-for-cheriyamundam-panchayat-secretary.html>

<sup>40</sup> 2007 (4) AWC 3470

reminded that it also needs to be mentioned that Article 40 of the Constitution empowers the State to take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as unit of self-government. The Seventy Third Constitution Amendment Act, 1992 inserted Part IX in the Constitution which deals with the Panchayats. Article 243G of the Constitution provides that subject to the provisions of the 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 as institutions of self-government in matters relating to the implementation of schemes for economic development and social justice as may be entrusted to them including those matters listed in the Eleventh Schedule. Amongst others, Article 243H of the Constitution provides that the Legislature of a State may, by law, authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits as may be specified in law. A perusal of the Eleventh Schedule, the court believed, indicates that the matter relates to roads, culverts, bridges, ferries, waterways and other means of communication. In order to give effect to the Seventy Third Constitutional Amendment, the Zila Panchayat Act was suitably amended in 1994.

In a case before the National Green Tribunal, a Seizure of 10,710 kilograms of plastic bags by Municipal Council, Bhiwara was carried out on 20.06.2013 from the godown of the applicant who has founded a challenge in the present application.<sup>41</sup> A question arose as to whether the material seized fits in the definition of 'plastic carry bag' as envisaged by law or not. Rajasthan Pollution Control Board was directed to inspect the premises where the seized material was lying in the presence of the officers of the Municipal Council and the same was produced before the court. A short question raised in the present application was whether the material which was seized under *mokapanchnama* answers to the description of the contraband carry bag as described in law. The justification to the seizure has been made with reference to the Plastic Waste (Management and Handling) Rules, 2011 and the public interest in checking the hazard of the plastic carry bags it serves. Learned counsel appearing on behalf of the respondent referred to the definition of carry bags in the clarification issued vide letter dated 13.09.2010. According to him the material which was seized can be used or has a possibility of being used as carry bags. One may ask question why 'plastic carry bags'

---

<sup>41</sup> M/s Madhup Agency vs. State of Rajasthan &Ors., National Green Tribunal, Circuit Bench at Jodhpur, O.A No. 50 (THC)/2014

as described herein above have been viewed as contraband in light of the Plastic Waste (Management and Handling) Rules, 2011. It has peculiar shape or improvisation so as to tempt its use by common people in market transactions and thereafter litter the plastic carry bags in the public places with consequential environmental injury as quoted herein above.

What is therefore, important is not the possibility of its use but its form and its attendant circumstances which tends to make it contraband. Applying this description to the samples the court found that the plastic bags did not have self carrying features such as vest type bags or “D” punched bag. Furthermore, the seizure panchanama dated 20.06.2013 was silent about having found any ancillary material like punching machine or fresh rope or staple which could be used for converting these bags into form of a carry bag with self carrying feature. In the absence of self-carrying features, the bags which were seized can be viewed as those constituting integral part of the packaging in which goods are sealed prior to use. It is the case of the applicant that he was not a manufacturer but the seller of packaging material. Therefore, the court held that in the given facts and circumstances of the case that plastic role/bags seized under mokapanchnama dated 20.06.2013 were not contraband or prohibited carry bags susceptible to seizure vide notification dated 21-07-2010.

In a PIL before the Uttarakhand High Court, the Petitioner alleged that the municipal waste generated in the city was being dumped directly in the river that passed through the locality.<sup>42</sup> He, therefore, sought direction to be issued to the respondent to stop the dumping of municipal waste in river and also to remove dumped garbage. The issue that arose was that whether the PIL filed by the petitioner for protection of the river deserved to be worthy of being allowed or not. The court stated that Municipal bodies and Nagar Panchayats are required to dispose all waste garbage following a scientific method to avoid contamination of all the rivers and seepage of harmful chemicals into the underground water. All Municipalities, Municipal Corporations and Panchayati Raj Institutions were further directed by the court to consider granting one month salary as Bonus to Safai Karamcharis considering the arduous and hazardous duties discharged by them.

---

<sup>42</sup> Sai Nath Seva Mandal vs. State of Uttarakhand and Others, Writ Petition (PIL) No.80 of 2012, Date of Judgment: 16-03-2017

In another case before the National Green Tribunal, an Injunction was claimed against the respondent i.e. the State Government which had issued notification for banning manufacture, supply, sale and use of plastic carry bags, flex with all type of plastic products with certain exempted categories.<sup>43</sup> It was claimed that such a ban prohibited the business of the applicant. The applicant further claimed that the permission had already been granted by KSPCB for the manufacturing of plastic carry bags treated under the 'Green Category'. Therefore it remained to be determined whether action of the respondents was justified while permission was granted by KSPCB for manufacturing of plastic carry bags under Green Category. The court decided that it is for the State Govt. to consider whether the product can be exempted in the event of appellant giving categorical assurance by way of affidavit to the Government that all used materials which are traded in State by appellant will be recycled and based on appellant's assurance that no flex will be left uncollected and thrown out after use. Till any other order to the contrary may be passed by State Government, considering that the regulation of plastic waste; especially carry bags etc., has gone beyond controlling limits of Corporations/Municipalities/Panchayats in the State and becoming highly unmanageable, as matter of policy, the decision has been taken which has been enforced by way of a direction. It is not for the Tribunal to decide the correctness of State's policy especially in the absence of any perversity. It is not for the Tribunal to direct the Government to follow either this option or any other. Appellants were not entitled to any relief as prayed for in the appeals.

In a case before the Kerala High Court, the appellant claimed under the Kerala Private Forests (Vesting) Act, 1971, vide Section 3 that the scheduled properties belonged to their common ancestor.<sup>44</sup> The Tribunal dismissed such an application and held that properties were forest lands, therefore, not exempted under any Act. This appeal was carried out to determine whether the appellants were entitled to claim the benefit of Section 3(2) of Act. The court stated that in order to claim benefit of Section 3(2) of the Act applicant should prove that he is the owner and that he had personally cultivated the land prior to appointed day. There was

---

<sup>43</sup> K. K. Plastic Waste Management Private Limited and others vs. State of Karnataka and others, National Green Tribunal, Chennai Bench, 13 January 2017

<sup>44</sup> Raveendranadhan (Died) S/o Subhadra Amma and others vs. State of Kerala, MFA. No. 116 of 2014, Date of Judgment: 09-01-2017

no cultivation when the partition deed was executed in the year 1972 and it was lying for green manure for paddy cultivation. So, his case that the land was under cultivation is absolutely incorrect as he had admitted during his cross examination that the Schedule property in his possession of allotted to share was not under cultivation. A person who claimed that the property was cultivated has to prove its existence on appointed day. No reliable evidence was adduced by the appellants to indicate that any crop had been cultivated in properties prior to the appointed day so as to exclude the lands in dispute from the definition of forest land. No documentary evidence was made available to infer that they were only holding properties within ceiling limits. Tribunal was justified in presuming that originally it was forest land and continues as forest. Later in the Appellate stage, additional documents were adduced. The question now arises is whether, prayer of acceptance of additional document deserved to be accepted. It was stated that Order. 41 r. 27 of CPC enables Court to take additional evidence only in circumstances specifically enumerated therein. After a thorough determination it was concluded that it is not just and proper to accept additional evidence produced along with the appeal memorandum in evidence as prayed for by the appellants. Such kind of easy disposal has been possible due to the formation of PRIs which serve as a watchdog on all sorts of rural resources and prevent any hindrance to national resources and their mis-utilisation.

## **7. Conclusion**

The 73rd amendment was brought about in the year 1992. In such a short span of time, it has proved its necessity. Today several villages are functional and developing due to such environmental protection and the amendment. At the same time, it needs to be recognised that the progress is slow as compared to the looming problems. In the future, it is going to be a tough test for the PRIs to withstand the perils that adverse environmental situations are going to present. However, there are several success stories to be inspired from. The collaboration of the PRIs with other institutional organisations and administrative powers is a recent trend which was initially absent and even met with opposition. A small change in the understanding has resulted in such a positive impact, therefore, we can be further hopeful that a fully developed and cooperative mechanism between the three-tiers of administration as well as the grass-root people would result in even more phenomenal changes.