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Editor's Note

The Centre is pleased to place before the readers Volume 2 Issue 1 of NUJS Journal of Regulatory Studies. The present Volume is an outcome of a National Seminar that was conducted by our Centre at WBNUJS on the occasion of completion of 25 years of Panchayati Raj System in India. This Volume mainly focuses on the 73rd Amendment, 1992 which mandated the formation of a three-tier Panchayat system and the challenges relating to it. Many eminent speakers from the West Bengal Panchayati Raj Department and from the legal academia attended the Seminar and gave their valuable insights. It was followed by paper presentations where the presenters focused on the ground realities circumscribing the issue. The present Volume of the Journal covers wide areas on the Panchayati Raj System such as role of women in Panchayats, effective participation, capacity building, implementation of PESA, role of Panchayats in handling environment-related issues and so on.

The researchers worked hard to bring out the second Volume. In this Volume, we are able to provide to the readers as many as six articles.

On the eve of the publication of this second Volume, I sincerely thank the Hon'ble Vice-chancellor Prof. (Dr.) P. Ishwara Bhat for the constant support in meeting all our requirements. Special thanks to all the contributors for their support in the publication process. In this Volume, we tried our best to publish scholarly articles which may contribute towards reshaping the legal and social views relating to the functioning of PRI institutions in India. I hope this Volume meets the expectations of the readers.

Prof. (Dr.) T. R. Subramanya
Coordinator and Research Fellow

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**GENDER, DEMOCRACY AND EMPOWERMENT: GRAM PANCHAYATS AND
THE WOMEN OF INDIA**

Neha Diwakar Desai*

ABSTRACT

India has come a long way in including and strengthening the role of women in democratic decentralisation and policy making. This paper aims to look at how women engage themselves with Gram Panchayats from the perspectives of equity, socioeconomic justice and democratic decentralisation. There are three parts of the paper. The first part deals with the current status of women's engagement with Gram Panchayats and how the existing socio-legal frameworks have helped women in elevating their socio-political status while developing the institutions at the grassroots levels. In the first part, apart from direct engagement, the role of Self Help Groups is also sought to be examined. The second part deals with the problems that woman representatives and participants face. The list is long and an effort has been made to examine the reasons behind these problems and reach to a common conclusion in order to find viable solutions. The paper makes an attempt to find out how the sense and sensibility of women shape these grassroots democratic institutions and bring a hitherto overlooked aspect to decision making and prioritising. The third part is about the possible areas to work on in order to develop greater female participation and to empower the democratic institutions while empowering the women. The paper is based on descriptive and historical methods and strives to provide a theoretical analysis of the changing roles of women at the grassroots level.

* M.A, Yashwantrao Chavan Maharashtra Open University, Nashik. E-mail id- nehad.2711@gmail.com

“For me, a better democracy is a democracy where woman do not only have the right to vote and to elect but to be elected “

Michelle Bachelet, Head of UN Women, former president and defense minister, Chile.

1. INTRODUCTION:

Women form 46 per cent of the total 13.41 lakh elected representatives in Panchayati Raj Institutions (PRIs) across the country.¹ While we see some positive changes brought in by some of the woman elected representatives, many others are still struggling even to attend a single Gram Sabha without the permission of their husbands or other relations. From poverty and illiteracy to unsupportive families and unwelcoming villagers, many women Sarpanch and Gram Panchayat members are fighting these odds on a daily basis. It has been seen that in states like Rajasthan and Chhattisgarh women Sarpanch have brought in new priorities in policy making at the village levels and have considerably changed the perspectives of the villagers,² there is still a long way to go for women participants en masse and an analysis of underpinning causes of opposition or hindrances will help in chalking out a training and policy framework to empower the women of rural India.

2. HISTORICAL BACKGROUND:

The Rig Veda mentions Sabha and Samiti, assemblies where the elders in the villages came together and helped the Rajan in taking policy decisions. The scriptures also talk about women participating in these Sabhas along with their husbands.³ During the later times, as would be seen in the further future, the villages were always self-reliant and governed locally. Although the Uttaramerur inscription gives accounts of the Chola village administration, there have not been any concrete evidence of participation of women in such assemblies. While the Panch system continued for the longest time in Indian villages and the revenue system was headed by local, hereditary officials,⁴ the current model of local self-government started to come into existence only after the advent of the British Raj in India.

¹ 'Women Constitute 46 Per Cent Representation In Panchayati System: Minister' (www.ndtv.com, 2017) <<https://www.ndtv.com/india-news/women-constitute-46-per-cent-representation-in-panchayati-system-minister-1256125>> accessed 25 November 2017.

² Abha Sharma, 'Discarding Veils, Embracing Change: Rajasthan'S Extraordinary Women Sarpanches' (www.thebetterindia.com, 2017) <<https://www.thebetterindia.com/13654/discarding-veils-embracing-change-rajasthans-extraordinary-women-sarpanches/>> accessed 25 November 2017.

³ Upinder Singh, *A History Of Ancient And Early Medieval India: From The Stone Age To 12Th Century* (7th edn, Pearson 2009). 188-192

⁴ J L Mehta, *Advanced Study in the History of Medieval India* (2nd edn, Sterling Publishers Private Limited 1979) 171

In 1882, Lord Ripon's Resolution started financial decentralisation giving more power to the local bodies. In 1908, the Royal Commission on decentralisation recommended devolution of petty judicial powers to village Panchayats. The engagement of women with PRIs started when Women's Indian Association was established in 1917 with the main aim of fighting for women's suffrage in the local, provincial and central administration. The princely state of Travancore-Cochi was the first to grant women the right to vote in local Elections. In 1921, Madras became the first British Province to grant women's suffrage in local body elections and Bombay and United Provinces followed suit within months. In 1935, the Government of India Act gave provinces more autonomy and demarcated taxation relations between local bodies and provinces.

In the Post-independence era, organisation of village panchayats was included as one of the directives principles of state Policy in the constitution of India and Rajasthan became the first state to establish PRIs in 1959. 1992 was an important year when the 73rd constitutional amendment was enacted and provisions were made for 33% reservation of seats for women in village Panchayats and also for the reservation of offices of chairpersons. The next major step came in 2009 when the Union Cabinet approved 50% reservation for women in local self-government bodies.

3. CURENT SITUATION:

The understanding of the existing socio-political scenario is necessary in formulating a cohesive policy for the empowerment of Gram Panchayats through women's participation. After the 2009 central approval for 50% reservation of seats for the female candidates in local self-government institutions, the number of women elected in PRI's have rose to 46.14% of the total elected representatives.⁵ However, we need to look much beyond this facade to analyse the situation in which these representatives work, the policies that are near and dear to them and the work they wish to take up.

There are two paths in which women engage with Gram Panchayats. One, those who contest and win (or lose) elections at the village levels. Two, those who participate in the Gram Sabhas and not in the politically motivated electoral process. Both the process being

⁵ Ministry of Panchayati Raj, Government of India, "Status of Representation Of Women In Pris" (2016).

equally important for the empowerment and participation of women in grassroots politics, an attempt has been made to look at them separately.

1. The Contestants:

Engagement with the Gram Panchayats starts with filling up the nomination forms and for those who win, continues till one's term is ended. It has been observed⁶ that a whopping 76% of the women candidates in Gram Panchayat elections attribute their husbands, family or other relations as the source of their motivation to participate in the electoral process while only 7% agree that they are self-motivated. As to the electoral process, more women participate in filling up the nomination forms, the big number being attributed to the fact that the Election Commission has made it mandatory for the candidate to be physically present. This is contrasted by a very low participation in non-mandatory but nonetheless important activities like collection of funds.

Without denying the crucial role reservations have played in increasing the representation of women, the author would like to point out that these women might not have been able to enter the governance system if not for the constitutional mandate.⁷

2. The Participants:

While 27% of those who do participate in Gram Sabhas were found to be participating always and 29% participated often, meaningful deliberations and productive participation still seems like a distant dream for many of the womenfolk. This is because only 34% of the woman surveyed had actively participated in a Gram Sabha. When prodded about the reasons of non-participation, 34% of the women cited male domination as the primary reason, and 17% said gender discrimination exists in Panchayats.

It can be seen that in processes where the presence of a candidate is mandatory, like the filling up of the nomination form, greater participation is seen. While in more 'optional, nonetheless crucial for election activities like collection of funds, the participation is close to none. Additionally, while the women are attending Gram Sabhas, they are not voicing their

⁶ Goutam Sadhu and Chandra Bhushan Sharma, 'Factors Influencing Participation Of Women In Panchayati Raj Institution: A Study Of Rajasthan' (2014) 3 International Journal of Science and Research (IJSR) <<https://www.ijsr.net/archive/v3i11/T0NUMTQxNTQx.pdf>> accessed 25 November 2017.

⁷ Ganapathy Palanithurai, *Dynamics Of New Panchayati Raj System In India: Empowering Women* (Concept Publishing Company 2002).58

opinions effectively. What the data conveys is very clear, representation and participation are two very distinct processes. What 50% reservation ensures is the representation of women. And there exist a plethora of social, economic and cultural reasons hindering the full participation of women in Gram Panchayats.

4. THE PROBLEMS:

1. Attitude, perception and family:

A research article⁸ analysing the problems faced by women Gram Panchayat members in Beed district of Maharashtra states that 99.07% of the women surveyed said that male members of their families dominate their decision-making process while on another account, a disturbing 98.14% claimed that the attitude of their families is unsupportive for doing Panchayat work. This is surely not the case of Maharashtra only, as evident from the speech PM Narendra Modi delivered in 2015, calling out for ending the 'Sarpanch Pati' culture.

The legal mechanisms for reservations have not been helpful in changing the traditional approach of the society and the family members towards women who are assuming leadership and participatory positions in their villages. Their participation is still being perceived as an act of rebel, or a 'permission' that they have been granted by their male counterparts. Moreover, innumerable accounts have been reported where women candidates were used merely as proxies for retaining power by the male politicians.⁹ The case of Sipra Mandal from Ramnagar Gram Panchayat of Mahakalapada block of Odisha serves as an example. In January 2017, she was contesting Panchayat elections for the first time after the 50% reservation norm was implemented. Her husband, Mrutyunjay, however, was elected as the sarpanch of the same bloc for three times in a row.¹⁰ The problem lies in the perception that women are by nature inferior to men and are not capable of taking decisions. The patriarchal upbringing and surroundings make it difficult for many male members to cooperate and obey the female leaders, evident from the fact that 93.51% female members cited it as a reason in the above-mentioned study.

⁸ J M Deshmukh, A M Kshatriya and A V Shinde, 'Constraints Faced By Women Member Of Gram Panchayat' (2013) 8 Agriculture Update. 168

⁹ Brijesh Kumar, 'Sarpanch By Proxy' *Governance Now* (2017) <<http://www.governancenow.com/views/columns/sarpanch-proxy>> accessed 3 August 2017.

¹⁰ Express News Service, 'Women As Puppets, Male Kins Pull Strings In Odisha Gram Panchayat Elections' *The New Indian Express* (2017) <<http://www.newindianexpress.com/states/odisha/2017/jan/28/women-as-puppets-male-kin-pull-strings-in-odisha-gram-panchayat-elections-1564343.html>> accessed 3 August 2017.

2. Economic dependence

A study published by the Ministry of Women and Child Development¹¹ states that 100% of the elected as well as general female members of Gram Sabhas think that unemployment is the primary reason behind them being treated unequally by the male members. Economic dependence plays a crucial role in changing the perception of women about themselves and adds to their self-confidence. A case in point is the participants of various Self-help Groups (SHGs) where their say in family matters increased when they started to earn from the SHG's business. The hitherto mentioned data about marginal participation of women in election funding processes also points a finger towards their economic dependence. This situation hampers the participation in two ways. Firstly, it becomes easier to place a dependent candidate as a proxy. And secondly, the voices and opinions of the dependent women from households are neglected during the Gram Sabhas and their husband's or relation's opinions are taken as their opinions as well.

3. Violence, Corruption and Character

The village politics in India has no longer remained the ideal of Mahatma Gandhi's imagination. It has become a breeding ground for money, muscle and manpower mafias. This situation makes it difficult for first-generation women contestants to contest and win or lose the elections. The elected candidates also face threats of violence, or character assassination from the leaders. An interview¹² of Jagrani Devi, the Gram Pradhan of Hamirpur in UP elected in the 2000 election, taken during a symposium in 2002, throws light on the issue very clearly wherein she states that, "Certain problems are always there. Some threaten you with your life whereas others want you to behave like a woman".

4. Cooperation and Confidence, or lack thereof:

Elected members of the Gram Sabhas often face hostile environments while working with their male subordinates. The orders given are often not followed and the decision-making process is stalled. While we are lauding the emergence of All-Women Gram Panchayats in many states, the fact that such Panchayats also emerge because the male members do not wish to work with the females should not be ignored.¹³

¹¹ Ministry of Women and Child Development, Government of India, 'Problems And Prospects Of Emerging Women Leadership In Scheduled Tribes In Rajasthan'.

¹² Sahabhangi Shikshan Kendra, Interview with Jagrani Devi (2002).

¹³ Seemanthini Niranjana, 'Gender Inflections Within Panchayat Raj', *The Violence of Development: The Politics of Identity, Gender, Social Inequality in India* (Kali for Women 2002).

While the Gram Sabhas are a public affair, many participants hesitate to speak in front of the male members of the family and village elders and seem to be quiet in spite of having original and insightful ideas. Moreover, an alarming 91.67% female member surveyed¹⁴ have stated that they do not participate in the decision-making process because of lack of confidence.

While there are incidental and individual reasons like observance of purdah for some or illiteracy for others, the above four have been included in this writing as the representative and underlying issues that female Gram Panchayat members and participants face.

Before going into the details of what are the necessary steps to be taken to change this scenario, it is important to see what impact does participation have on the women who are participating vis-a-vis the influence they have on their respective Gram Panchayats.

5. IMPACT OF FEMALE PARTICIPATION:

1. On the Participants:

As the discussion above clearly points out, Gram Panchayats are a platform for public discussion and decision making. While many female participants still face the burden of their male counterparts or depend upon their husbands, etc., those who do participate willingly and productively have reported important changes in their behaviour and other's perception towards them. A sociological study of the role Gram Panchayats have played in the empowerment of women in Karnataka is a case in point.¹⁵ The observations made by the surveyed women are as follows.

A. Sociological impact:

It has been observed that the participation of women in Gram Sabhas can change their social status in their families as well as in villages. The hitherto unheard-of voices are presented by these women and, thus, they start commanding more respect from the villagers. Gram Sabhas also give an opportunity to womenfolk to step out of their houses and participate in community building. They also become an integral part of the decision-making

¹⁴ J M Deshmukh, A M Kshatriya and A V Shinde, 'Constraints Faced By Women Member Of Gram Panchayat' (2013) 8 Agriculture Update.

¹⁵ Kavya C N and Manjunatha S, 'A Sociological Study On The Role Of Gram Panchayats In Women Empowerment In Karnataka State' (2015) 7 IJCRR.

process. This has also been seen to reflect in their households and the participants have reported to gain more respect within their families too.

B. Economic impact:

70% of the women participants surveyed¹⁶ have stated that their standard of living conditions has increased due to taking up various administrative roles in the Gram Panchayats. However, this is truer in case of the elected females and not in the case of mere participants. Active involvement in economic decisions has also made many women capable to shoulder such responsibilities within their families and, thus, has increased the economic independence of these women.

C. Psychological impact:

Gram Sabhas have helped in increasing the self-confidence of the female participants. This is because, the village meetings give them an opportunity to voice their opinions and provide them with a sense of validation mostly lacking in an otherwise patriarchal family surrounding. This could be very clear from the fact that 86% of the females surveyed have stated that the participation in Gram Sabhas has decreased the inferiority complex they used to have.

2. On the Working of Gram Sabhas:

Women bring their own sense and sensibilities to the working of the Gram Sabhas. The points to be discussed and the way in which discussions happen change at the village level due to the presence of female members.

A. Issues taken up:

It has been observed that many female Sarpanch are keen on working on issues which have traditionally been ignored by the male members. Sanitation and education, for example, are the primary areas that gain focus with the females in offices. Also, the female participants discuss issues such as Girls Education more frequently. Female participation helps in making the policies of the Gram Panchayat more inclusive and diverse. In a nutshell, the female participants help in empowering other females of the village and make the environment more conducive for long-term changes.

¹⁶ Kavya C N and Manjunatha S, 'A Sociological Study On The Role Of Gram Panchayats In Women Empowerment In Karnataka State' (2015) 7 IJCRR.

B. Working of the Gram Panchayat:

It could be observed in many villages that the presence of women in office and in meetings have worked as a catalyst to bring down the level of violence. The traditional mindset, proving harmful in many areas works as a barrier for the male members to use physical or verbal abuse in the presence of women members, thus, reducing the level of violence in the workings of the Gram Sabha.

C. Corruption:

Higher level of women in government machinery is strongly associated with lower level of perceived corruption in democracies with higher electoral accountability.¹⁷ While no blanket statements can be made regarding women officials in Gram Sabhas, these women have been traditionally seen to be less corrupt than their male counterparts. Having said that, it needs to be noted that the less corruption could be attributed to majority of the women officials being the first-time politicians or the general lack of economic dependence of these women participants.¹⁸

A comparison between the reasons for women to not participate in the Gram Sabhas and the impact of their participation shows that their weaknesses start to change once they are given appropriate opportunities. But there still exist major flaws in both the initiation and participation mechanisms which we need to work on in order to make the Gram Panchayats a true vehicle of democratic decentralisation and inclusive empowerment.

6. WAY FORWARD:

1. Representation is the first step:

Although it has been said that reservations will not promote cohesive and sustainable empowerment for women, it cannot be ignored that they serve as the first steps towards empowerment. In India, 19 out of 29 states have 50% reservation for women in local self-government bodies. The first major step at the policy level could be making efforts towards implementing the 50% reservation policy in all the states. Policy-level initiatives must also be

¹⁷ J Esarey and L A Shwindt-Bayer, 'Women's Representation, Accountability And Corruption In Democracies' (2017) 1 British Journal of Political Science.

¹⁸ Dr. Naomi Hossain and Dr. Celestine Musembi, 'Corruption, Accountability and Gender: Understanding The Connections' (UNDP and UNIFEM 2010) <<http://www.undp.org/content/dam/aplaws/publication/en/publications/womens-empowerment/corruption-accountability-and-gender-understanding-the-connection/Corruption-accountability-and-gender.pdf>> accessed 25 November 2017.

taken to ensure that the reservation schemes are implemented immediately and transparently and there are no gaps between the quota granted and the actual female representation.

2. Sensitisation:

As evident from the discussion above, the attitude of the family members and male members of the Gram Panchayats is one of the major hurdles behind the entry and effective participation of female Panchayat Members. Long-term campaign-based efforts are needed to change this situation. The planning of such schemes must be done on a decentralised basis so as to include local needs in the sensitisation methodologies. Common training programmes for male and female elected members could serve as a platform for making the elected male members more cooperative and aware regarding rights and powers of the female members.

3. Capacity building of women:

In order to achieve the aim of women empowerment sustainably and effectively, we need to start working on not only the elected Gram Panchayat members but also the general female citizens of a particular village. It is only when more women start participating in the regular, day-to-day workings of the Gram Panchayat and become a vocal force in the Gram Sabhas that the environment conducive to the growth of female leadership will start to emerge. Indian villages still show parity between the male and female literacy rate. Bridging that gap would be the first step. Making women aware about the functions of the Gram Sabhas and their civic responsibilities would help in changing their attitude towards participation.

4. Capacity building of elected women representatives:

Because a staggering number of female candidates are used as proxies by their husbands or other male family members, they are never given a real chance to work at the decision-making levels. Lack of awareness about the functioning of the Gram Sabhas has been reported by many women as the reason for not being an active member. Structured initiation and training programmes should be a part and parcel of Gram Panchayats working after every election. The training should include, among other things, the basic understanding of the civic liabilities of an official, the legalities involved and an induction programme with the district officials, along with basics of information technology. This, along with the previously discussed efforts, will help in reducing the number of Sarpanch Pati and proxy candidates.

5. Economic Independence:

Economic dependence leads to overall submissive attitude by women in all socio-political matters. Even a small-scale employment at a village level goes a long way in giving women a sense of independence and boosting their self-image, thus reflecting in the better participation in Gram Sabhas. Especially, the younger women could be targeted for this approach. The process should start from developing vocational skills and giving job-oriented training. Women's networking programmes could also help to achieve a sense of independence.

6. Self-help Groups:

SHGs could be the vehicle of change in many villages. Women's collectives and SHGs could be made the focal point for initiating majority of the above-discussed policies. SHGs are well-established institutions in many states of the country. They help in making women economically independent and also increase their confidence, two things that are crucial for better participation of females in Gram Panchayats. It has also been observed that when women participate in SHGs, they take more part in decision making at home and the attitude of their family members changes. Thus, they work on social, economic and psychological fronts to elevate themselves to a higher level of empowerment. Strengthening of such groups and tying them up with Panchayat works could be beneficial.

7. CONCLUSION

Gram Panchayats are a quintessential Indian experiment towards democratic decentralisation. They are the first point for the introduction of civic and political processes for majority of the Indians. Gram Panchayats and Gram Sabhas have proved useful in disseminating government schemes and in identifying beneficiaries, etc. But there are some serious flaws in the functioning of the Gram Panchayats which we need to address in order to make them democratic institutions and not mere administrative set ups. When these grassroots institutions are becoming vexed with political malice along with money and muscle power, the inherent motives behind their foundations are threatened.

While the 73rd amendment to the Indian Constitution made some very necessary changes in the governance of these Gram Panchayats, there are still miles to go especially in relation to the Village Panchayats and the participation of women in effective governance. The inherent structure of the patriarchal family system and village society makes it difficult

for women to truly participate and contribute in village governance. There is a wide gap between what the law enables, i.e., representation and what is the aim of that law, i.e., participation. It is unsettling to note that women empowerment through Gram Sabhas seems to be a distant dream in today's socio-political scenario of rural India.

Empowerment in its real sense is not only about making rules and regulations for more representation. It will also not manifest itself from stray examples like an all-women Gram Panchayat in Maharashtra. The true manifestation of empowerment is possible only when every woman in a village acquires greater control over her own life. Unfortunately, the Gram Panchayats and the Gram Sabhas have failed drastically to achieve this aim. What we need is an institution which gives the rural women a chance to express their views freely, an avenue to discuss and debate over their ideas which are hitherto untapped and enhance their confidence and self-image. If the rule bound structure of current village administration is unable to provide such possibilities, then we need to look beyond them at voluntary networking groups and women's collectives as a first step to make women self-aware before they start participating in the Gram Panchayats.

However, both these processes should happen simultaneously as greater representation on political fronts will be beneficial for enhancing the social status of women at village levels. The government and the voluntary sector need to work on both legal and social levels to realise the aim of democratic decentralisation and grassroots empowerment. Considering the changes that elected women representatives bring in to the democratic set up of a Gram Panchayat, it is high time to realise that a greater participation of women is going to be a win-win situation. We need to look beyond the technicalities and dig deep into the psychological and social analysis in order to make Gram Panchayats truly inclusive and decentralised.

PANCHAYATI RAJ INSTITUTIONS AND RURAL DEVELOPMENT: A STUDY ON
RESPONSIBLE TOURISM INITIATIVE IN KUMARAKOM GRAMA
PANCHAYATH

Anand Jayakrishnan K.

ABSTRACT

Despite being a consumerist state, Kerala was able to maintain high living standards matching those of highly developed nations, owing to its huge foreign remittances and human development. More than four decades have passed since the conception of 'Kerala model of development' and the earlier euphoria surrounding the model no longer exists as serious questions regarding its sustainability were raised in 1990s. Almost in the same decade, the idea of 'New Kerala Model' was mooted in academic circles. This new model, which promised to integrate sustainable development goals into policy making, was essentially rooted in the concept of decentralisation. However, over the years, Panchayati Raj Institutions (PRIs) have been vehemently criticised for their failure to take into account long-term aspirations of the locality and to implement projects without meaningful forward and backward linkages. It was almost in the same era that Kerala recognised the potential of tourism as an important income generator. The present paper reflects upon how problems associated with PRIs can be solved to an extent if we can effectively incorporate tourism as an alternate revenue source, through a study on responsible tourism initiative in Kumarakom Grama Panchayath. The aim of the present paper is to make an in-depth study regarding the role of tourism as an alternate revenue source for PRIs in Kerala. The two main objectives of the paper are (i) to trace the history of PRIs in Kerala and analyse the challenges faced by them during the post-liberalisation era (ii) to examine how tourism can be effectively used to overcome the challenges faced by decentralisation in Kerala through a case study in Kumarakom Grama Panchayath. The paper employs descriptive and analytical methods to dissect facts and frameworks and to reach at outcomes.

* Research Scholar, University of Kerala, Thiruvananthapuram. E-mail id- anandjayakrishnan2015@gmail.com

1. INTRODUCTION

The concept of rural development is multi-sectorial comprising agriculture, rural industries and necessary infrastructure aiming to enhance the quality of life of rural masses. Rural development is a national necessity. Since agriculture, predominantly rural in nature, provides employment to nearly 70 percent of Indians and serves raw materials and purchasing power for industries, rural development has to be given considerable importance in our development process.¹

The first serious effort to solve the problems of rural development was made through Community Development Programme in 1952 and National Extension Service in 1953. After the completion of five years of Community Development Programme, as per the recommendations of Balwant Rai Mehta Committee, a three-tier Panchayati raj system was set up in India with Gram Panchayats at the Village level, Taluka/Block Panchayat at the Taluk level and Zila Parishad/District Panchayat at the District level. The idea of a grassroots level democracy in which common people participate in the political deliberations and decision making was not alien to India. The modern-day Gram Sabhas have similarities to these Vedic institutions of Sabha and Samiti.

Plan documents of both state and central governments have always emphasised the importance of the Panchayati Raj Institutions (PRIs). During the second five-year plan itself, Panchayats were held responsible for socioeconomic transformation of village life. The plan document further stated that rural progress depends entirely on the existence of active organisation in village which can bring all the people, including the weaker sections, into the ambit of common programmes to be carried out with the assistance of the village administration. Since then, PRIs served as instruments for rural reconstruction and development and as agencies for both state and central government sponsored programmes.

¹ K. M. Arjun, 'Indian Agriculture- Status, Importance and Role in Indian Economy' (2013) 4 (4) International Journal of Agriculture and Food Science Technology <https://www.ripublication.com/ijafst_spl/ijafstv4n4spl_11.pdf> accessed 25 November 2017

2. PANCHAYATI RAJ INSTITUTIONS IN KERALA

The developmental experience of Kerala was some sort of a paradox for social scientists across the globe.² Kerala achieved high standard of living matched by many developed countries despite registering a relatively low per capita income. Referred to as the Kerala model, the exemplary development model is often attributed as the result of public actions and responsible governance. Many scholars regard this development experience as lopsided development, a term which they borrow from the Human Development Report. However, such a macro economy with a few dominating sectors is prone to be unsustainable in the long run.³ Like Kuznets' inference, the initial euphoria surrounding the Kerala model began to slowly disappear and questions regarding the sustainability of the Kerala model were raised in the 1990s.⁴ Industrial backwardness, agricultural stagnation, high level of unemployment, poverty among the marginalised sections, high incidence of lifestyle diseases and rising suicide rates were some commonly cited failures of the Kerala Development Model. The state was caught up in a cobweb of problems or in a 'Vicious Cycle,' i.e., low economic development led to low human development which in turn led to further low economic development. It was during this period, the idea of 'New Kerala model' developed in academic circles. The new model emphasised on participatory growth rather than on welfare growth and marked a shift towards bottom-up planning from top-down intervention. Decentralisation was the key concept around which the entire 'New Kerala Model' evolved.⁵

² K. P. Kannan, 'Kerala's Turnaround in Growth: Role of Social Development, Remittances and Reform' (2005) 40 (6) *Economic and Political Weekly* <<http://www.jstor.org/stable/4416172>> accessed 25 November 2017

³ Simon Kuznets, 'Quantitative Aspects of Economic Growth of Nations: Industrial Distribution of National Product and Labour Force' (1957) 4 *Economic Development and Cultural Change* 1.

⁴ The initial euphoria regarding the sustainability of Kerala model was questioned by academicians in 1990s as human development is not possible beyond a point without economic development. Their ideas were rooted in the writings of Kuznets and his views regarding pattern of macro-level growth of economy. Kuznets was of the view that the long run growth as well as its sustainability depends on the pattern of change in the economic structure defined as the sectorial composition of output, employment and labour productivity. He inferred that as economic development takes place, the share of secondary sector increases on initial phase followed by the tertiary sector. However in Kerala, there occurred a transition from primary sector to tertiary sector without creating a well-developed secondary sector. Kuznets inferred that such a lopsided structure with few dominating sectors is not conducive for sustaining and maximising overall growth of macro-economy, based on his research in European countries.

⁵ René Véron, 'The "New" Kerala Model: Lessons for Sustainable Development' (2001) 29 (8) *World Development* <[https://doi.org/10.1016/S0305-750X\(00\)00119-4](https://doi.org/10.1016/S0305-750X(00)00119-4)> accessed 24 July 2017

Though Kerala passed its Panchayati Raj Act in 1994 and held elections to the three-tier Panchayats in 1995 delegating 29 functions to local bodies in accordance with the 73rd and 74th constitutional amendments, the basic ideals were present in the state long back. The Administrative Reforms Committee constituted by the first E. M. S Namboodiripad ministry was heavily in favour of a decentralised governance structure.⁶ However, due to various reasons, the decentralisation drive failed to take off in the state, until 1990s. Kerala was also relatively serious in the decentralisation drive compared to the other states, as evident by the budgetary allocation of nearly 35-40 percent of the total outlay to local self-governments in 1996.⁷ Departing from the conventional wisdom of slowly building capacity of local self-governments and then the devolution of powers and functions, Kerala followed a different strategy of ‘Big Bang’ approach.⁸ Through this new approach, the state transferred nearly 30-40 percent of its annual plan outlay in favour of local self-governments. Decentralisation drive was launched under the popular name ‘People’s Planning Campaign’ during the 9th plan period. With the launch of ‘People’s Planning Campaign’ and ‘Planning from below,’ nearly two million Keralites were able to voice their opinions regarding local development. The nomenclature was subsequently changed as ‘Kerala Development Plan’ and ‘People’s Plan’ over the years, reflecting the changes in government, while broad objectives remained more or less the same. Some commonly upheld objectives of the decentralisation drive in Kerala are improving the quality of investment through resource allocation by priority fixation, framing local solutions to developmental problems through improved planning and implementation, exploiting local production possibilities, ensuring greater public participation and facilitating a system of demand to enhance improvement in the delivery of development and welfare services.

⁶ S M Vijayanand, ‘Kerala- A case Study of classical democratic decentralization’ (April 2009, Kerala Institute of Local Administration) <<http://www.panchayat.gov.in/documents/10198/1389387/S%2BM%2BVijayananth-Classical%2Bdecentralisation-Kerala.pdf>> accessed 25 November 2017

⁷ Besley T, Rohini Pande and Vijayendra Rao, ‘Panchayaths and Resource Allocation: A Comparison of South Indian states’ (April 2005) <http://sticerd.lse.ac.uk/eopp/_new/data/indian_project/papers/StateComparison.pdf> accessed 25 November 2017

⁸ K. Rajasekharan, ‘Decentralisation in Kerala: Problems and Prospects’ in T M Joseph (ed.), *Local Governance in India: Ideas, Challenges and Strategies* (Concept Publishing Company 2007)

3. COMMON CRITICISMS LEVELED AGAINST PRIs IN KERALA

Kerala records nearly three times of the unemployment rate at the national level.⁹ Migration played a pivotal role in venting out the magnitude of the crisis till late 1980s. The short-sighted policy to set up unaided colleges especially in engineering and science fields liberally had put enormous stress on the labour market, eventually resulting in educated unemployment. Failure of PRIs to curtail unemployment through job creation was subjected to severe criticism. The situation became worse since the rate of growth of productive sectors failed to absorb the expanding educated manpower.

During 2015-16, the contribution from primary, secondary and tertiary sectors to the Gross State Value Added at Constant prices (2011-12) was 11.58 percent, 26.17 percent and 62.24 percent respectively. With a stagnating secondary sector and a declining primary sector, local bodies failed in enhancing the contribution of agriculture and small-scale industries to Kerala economy. Coir, handloom, cashew and fishery industries barely receive any boost due to the decentralisation drive. Critics of decentralisation argue that projects undertaken by the local self-governments towards local development did not show any significant forward or backward linkages. The meetings of Gram Sabhas were not convened regularly. Even if they were convened, they involved only targeted beneficiaries and most of the upper, middle class sections seldom participated. This is against the very character of these organisations.

Decentralisation earmarks ten percent of total plan funds targeting enhanced participation of women in development decisions and ensuring a better quality of life. However, decentralisation drive in Kerala is widely criticised for serious lapses in the matters of women participation and neglect of other gender related-issues like domestic violence,

⁹ 'Kerala tops the unemployment rate' *The Hindu* (12 February 2016) <www.thehindu.com/news/national/kerala/kerala-tops-in-unemployment-rates/article8226139.ece> accessed 25 November 2017

health care, etc..., in planning process. It is criticised that marginalised sections like the Scheduled Tribes are yet to fully reap the benefits of decentralisation. Poverty-related deaths still get reported from tribal villages like Attappadi, etc...

The poor financial position of the Kerala economy adversely affects the effective functioning of fiscal decentralisation. As decentralisation is constitutionally a state subject, unless the state governments improve their financial health or local self-governments take steps to beef up their own resources, chances for the complete success of a decentralisation drive are gleam.

It is also criticised that devolution of large amount of plan resources took away the genuine interest of local self-governments to collect their own resources as they are content with the plan grants itself¹⁰. According to newspaper reports, in many areas of Kerala, only 30-40 percent of the allotted funds are utilised while the rest of them lapses. The failure of PRIs to implement projects within a stipulated time frame and the lack of clarity among PRIs regarding project selection often end up in non-productive segregated projects , adding more to the problem. These projects are often prepared on the basis of vote bank rather than taking into account the long-term aspirations of the locality, though the latter had been made an integral part of the planning process. So it is in this context, that we need to consider how problems associated with PRIs can be solved to an extent if we effectively incorporate tourism as an alternate income source.

4. WHY TOURISM IS IMPORTANT TO THE KERALA ECONOMY?

Since its modern beginnings, tourism had been promoted as an engine of growth and as a game changer for developing nations, including India. It is a well-known fact that, being one of the most densely populated states in India, land availability is an issue in Kerala. This is evident from the frequent newspaper reports about the agitations between local people and authority over land acquisition. Being such a land-deficit state, the establishment of heavy industries requiring large acres of lands is not feasible in Kerala. Secondly, many writers

¹⁰ K. Rajasekharan n (8)

have rightly acknowledged the beautiful landscape of Kerala which offers tremendous potential for tourism development.¹¹ Owing to its emerald backwaters, beautiful seashores and its precious biodiversity, Kerala has been described as ‘one of the must-see destinations of a life time’.¹² Tourism also contributes to the Kerala economy through direct and indirect income streams. Total revenue (including direct and indirect) from tourism during 2016 was Rs. 29658.56 crores.¹³ Foreign exchange earnings owing to tourism witnessed an increase of 15.07% from the previous figure and reached Rs. 6398.93 crores in 2014 and Rs.7749.51 crores in 2016.

Table 1

Total earnings from tourism from 2010 to 2016

YEAR	TOTAL REVENUE GENERATED FROM TOURISM (Direct & Indirect)
2010	17348
2011	19037
2012	20430
2013	22926.55
2014	24885.44
2015	26689.63
2016	29658.56

Source: Kerala Tourism Statistics 2016

With many Middle East nations makes mandatory recruitment of local populace by the implementation of NITAQAT laws and other states catching up with Kerala in terms of

¹¹ P. D. Jeromi , ‘What Ails Kerala’s Economy: A Sectoral Exploration’ (2003) 38 (16) Economic and Political Weekly < <http://www.jstor.org/stable/4413463>> accessed 25 November 2017

¹² Kokkranikal, J. and Alison Morrison, ‘Entrepreneurship and sustainable tourism: The houseboats of Kerala’ (2002) 4(1) Tourism and Hospitality Research < <https://doi.org/10.1177/146735840200400102>> accessed 25 November 2017.

¹³ Ministry of Tourism, Government of Kerala, ‘Kerala Tourism Statistics’ (Government Press 2016)

educational achievements, tourism is the need of the hour.¹⁴ Tourism is also regarded as an industry with strong linkage and multiplier effects. The Government of Kerala appointed Tata Consultancy Services to make an in-depth analysis of the impact of tourism on the rest of the Kerala economy. The study found that every one rupee of tourist expenditure creates a total output of Rs. 2.07 in the open model and Rs. 8.83 in the closed model. The study also found that the type I employment multiplier is 4.62 while type II employment multiplier is 15.19.¹⁵ Tourism can promote agro-based industries and thereby positively contribute to both agriculture and industry.

At this juncture, we need to revisit one of the most important challenges faced by the industry. It is related to the lesser role of PRIs in the development of the tourism industry. Frequent newspaper reports about the different stands taken by the local self-bodies and the state governments on tourism-related issues make this clear. The proper solution lies with the devolution of power and funds from the state and the central governments to the local self-governments. This should begin from the choice of destination to the distribution of revenue generated as the local self-governments have a better idea regarding the destination and its areas of potential. The question of improvising decentralisation through tourism and tourism through decentralisation is explored in later sections.

5. TOURISM AND DECENTRALISATION

It was almost during the same era of decentralisation that tourism was seriously considered as a profitable business in Kerala. Tourism is yet to be transferred as a subject to local governments, but local self-governments have shown interest.¹⁶ There were many initial attempts at decentralisation of tourism like the institutionalisation of District Tourism

¹⁴ For example, in Saudi Arabia, Nitaqat law makes it mandatory for all businesses in the private sector to reserve at least 10 percent of jobs for Saudi nationals

¹⁵ Tata Consultancy Services, 'Economic Benefits of Tourism Sector in Kerala' (Bengaluru 2000)

¹⁶ S. S Kang, 'Decentralisation- The Kerala Experience with Special Reference to Tourism Development' (International Colloquium on Regional Governance and Sustainable Development in Tourism-Driven Economies, Cancun, 2002)

Promotion Councils (DTPCs), emergence of ecotourism initiatives, etc...Some attempts at linking tourism and decentralisation in Kerala can be briefed as follows.

- (i) Group entrepreneurship by poor sections of the locality through skill development training and financial infrastructure for tourism-related activities is an example of how tourism can uplift the marginalised sections of the society, often criticised to be neglected by decentralisation. Kudumbasree initiative is the most relevant example.
- (ii) Ecotourism is another innovative step in recent years, where local self-governments provide minimum infrastructural requirements like drinking water and toilet. They also train tourist guides to generate self-employment.
- (iii) The state government is also in the process of building long-term perspectives on tourism development in association with the local governments. In recent years, the government has also kept a check on overcrowded architecture in destinations through spatial planning. The state government has already begun the preparation of tourism satellite account at destination level with active participation of agencies like DTPC.
- (iv) Responsible Tourism (RT) is about “making better places for people to live in and better places for people to visit.” This will be dealt in detail in the next section.

6. RESPONSIBLE TOURISM (RT)

Though the concept can be traced back to 1996 and even before that through the works of Jost Krippendorf, it was Cape Town Declaration of 2002 that gives a detailed view regarding the aims and factors involved in RT. According to the Cape Town Declaration, RT is about “making better places for people to live in and better places for people to visit.” RT involves all kinds of tourism activities which seeks to minimise negative economic, environmental and social impacts and to maximise the potential benefits to the local community.¹⁷

¹⁷ H. Goodwin, *Taking Responsibility for Tourism: Responsible Tourism Management* (1st edn, Good fellow Publishers 2011)

The terms sustainable tourism (ST) and RT are often used interchangeably. However, they are not exactly the same. ST connotes a broader concept placing more emphasis on theory which is an overused one. RT, on the other hand, places more emphasis on action rather than on theory or concept. It is to be noted that RT is not a brand as launched by many governments. All forms of tourism can be made more responsible.¹⁸

Ethic of responsibility involves willingness and capacity to respond and to exercise responsibility. RT involves three kinds of responsibilities- economic responsibility, social responsibility and environmental responsibility. The guiding principles behind these responsibilities are given below (Table 2).

Table 2

Guiding Principles for Economic, Social and Environmental Responsibility

ECONOMIC RESPONSIBILITY	SOCIAL RESPONSIBILITY	ENVIRONMENTAL RESPONSIBILITY
Provide appropriate and sufficient support to small, medium and micro enterprises to ensure tourism-related enterprises thrive and are sustainable	Endeavour to make tourism an inclusive social experience and to ensure that there is access for all, in particular vulnerable and disadvantaged communities and individuals	Use resources sustainably, and reduce waste and over-consumption
Maximise local economic benefits by increasing linkages and reducing leakages, by ensuring that communities are involved in, and benefit from tourism	Combat the sexual exploitation of human beings, particularly the exploitation of children	Promote education and awareness for sustainable development for all stakeholders
Develop quality products that reflect, complement,	Be sensitive to the host culture, maintaining and	Raise the capacity of all stakeholders and ensure that

¹⁸ *ibid*

and enhance the destination	encouraging social and cultural diversity	best practice is followed, for this purpose consult with environmental and conservation experts
Market tourism in ways which reflect natural, cultural and social integrity of destination, and which encourage appropriate forms of tourism.	Endeavour to ensure that tourism contributes to improvements in health and education	Assess environmental impacts throughout the lifecycle of tourist establishments and operations-including planning and design phase-and ensure that negative impacts are reduced to the minimum and maximizing positive ones

Source: *Goodwin, H. (2011). Taking Responsibility for Tourism: Responsible Tourism Management. United Kingdom: Good fellow Publishers.*

Though all these three responsibilities have their own relevance, the utmost importance is given to Economic Responsibility which seeks to promote local procurement of resources, to encourage local spending and employment and to ensure that local populace gets the benefit of tourism development. The industry-community symbiosis created through responsible tourism offers a win-win situation to the economy by making positive contributions to the conservation of nature and culture of locality.

7. RESPONSIBLE TOURISM IN KERALA

By organising state-level consultative meeting called ‘better together’ in February 2007, Kerala officially began its RT campaign. Subsequently, Kumarakom, Kovalam, Thekkady and Wayanad were declared as pilot projects. Destination Level Responsible Tourism Committees were organised for planning and execution of programmes at

destinations with the State Level Responsible Tourism Committee providing guidance at the upper level. These committees are represented by NGOs, tourism professionals, members from legislative assemblies, local self-governments, etc... Within these, there are various working groups focussing on economic, environmental and socio-cultural dimensions.

8. RT INITIATIVE IN KUMARAKOM

Kumarakom situated near Vembanad Lake on the western part of Kottayam district is famous for its lush green paddy fields, emerald backwaters, serene rural life and tiny plot of lands surrounded by small canals. Traditional economic activities of the region include agriculture, fishing and collection of sand for land reclamation purposes. With the stay of former Prime Minister A.B. Vajpayee in 2000, Kumarakom received international attention. Kumarakom never turned back since then, as investment began flowing to the village.

However, uncontrolled expansion of tourism like any other economic activity has literally twisted the rural life in Kumarakom. Mushrooming of resorts and homestays without proper planning has adversely affected fishing and many species of fish have disappeared. Tourism has even gone to the extent of privatising inland water bodies like Vembanad lake as many resort built illegal constructions near lake, destroying mangrove forests with zero regard to Panchayat.¹⁹

Following this, Kumarakom Grama Panchayath formulated People's Charter and Draft Guidelines and organised functional committees and technical sessions to check on the uncontrolled tourist activities. However, the efforts of the Panchayath suffered a setback as Kumarakom was declared as Special Tourism Zone with centralised committees deciding on tourism development in the concerned area. The Grama Panchayath had voiced its concerns as this move was totally against the spirit of decentralisation and openly declared that they would not allow the state government to take off their powers effortlessly. It was in this

¹⁹ *Responsible Tourism Initiative of Kerala: A Case Study on Kumarakom* (Kerala Institute of Travel and Tourism Studies 2013)

context that the state government initiated RT Programme in Kumarakom as a pilot destination in 2007. The Panchayath played a key role in the RT initiative unlike other tourism projects implemented earlier in the locality. Active cooperation with Kudumbasree units were made to ensure that benefits of the programme trickle down to the marginalised people, one of the major criticisms levelled against the decentralisation programme in Kerala. Like described earlier, economic responsibilities ensured that all stakeholders involved are benefited economically. In Kumarakom, since agriculture remains as an important economic activity, any programme aimed at the economic upliftment of the populace should be linked with agriculture. For achieving this end, the Panchayath identified most vulnerable groups and linked them with hotels and restaurants. The Panchayath, the Department of Tourism, Kudumbasree and Kerala Institute of Travel and Tourism Studies were part of this local procurement initiative. Price committee and Quality Assurance committee were formed to regulate price fluctuations and to ensure quality of procured vegetables and fruits. Through ‘Samrudhi’ groups, the Panchayath ensured timely delivery of procured items to the hotels and restaurants. Through this programme alone, it is estimated that nearly Rs. 1.5 million worth of items were procured.²⁰ Majority of the population also got employment opportunities after the implementation of RT in relation with the scenario before RT. They also did not have regular income flow prior to the implementation of RT. After the implementation of RT, their income was raised to a range of 0-6000 according to studies.²¹

Since most of the Panchayats are computerised in Kerala after 2011, data before 2011 is rarely available. In case of Kumarakom, data prior to 2011 is not available due to the expiry of preservation period. So a researcher has to rely on the comments of the Panchayath officials and the available data after 2011 for the purpose. It is to be noted that the Panchayath did not levy any direct tax on tourism. But impact of tourist inflows are reflected on increased collection of permit fee for buildings, license fee on resorts and lodges, profession tax on institutions and traders and various other penalties and fines as per the

²⁰ *ibid*

²¹ B. Sudheer, 'Final Report Of UGC Sponsored Minor Research Project On Economic And Cultural Impact Of Responsible Tourism Initiative In Kerala- A Case Study Of Kumarakom Panchayath' (UGC 2015) <<http://www.sncollegecherthala.in/research%5Csudheer.pdf>> accessed 18 June 2017.

Panchayath officials. According to the latest data, nearly Rs. 8.9 lakh had been amassed by the Panchayath through above-mentioned sources.

RT initiative in Kumarakom succeeded in the preservation and promotion of local art and culture forms. By linking with hotels and resorts, Panchayath aided women, cultural forums and others to perform Thiruvathira, Kolkali and Singarimelam providing them with alternative income source.²² In this way, the Panchayath was able to prevent the cultural breakdown that usually happens with short sighted tourism activities. The Panchayath also helped the hand craftsmen of the locality by skill development campaigns and marketed the souvenirs with the aid of hotels and resorts. Monthly sales worth Rs. 0.1 million happened through this alone according to the studies.²³ Through village life experience packages tourists get a real life experience of the village and learn about various types of activities like coconut leaf weaving, broom stick weaving, screw pine weaving, bow and arrow fishing, etc... These packages are conducted by country boats operated by local women and marginalised people with profit share attributed to them. Besides these programmes, institutions like Samrudhi Ethnic Food Restaurant operated by Kudumbasree workers also highlight the gender dimension of RT initiative.

Any unscientific development can threaten the host ecosystem and tourism is also not an exception. Recognising this, Environmental Responsibility was given due regard in RT initiative. With the help from Kudumbasree, 'Parisarasevikas' were organised by the Panchayath for the collection of waste and its disposal. The Panchayath also organised 'Zero Waste Kumarakom,' a training programme in association with RT cell for effective waste disposal. A Sewage Treatment Plant was established and plastic was totally banned at RT shops. Alternative materials like paper bags, cloth bags were encouraged. This along with a series of steps like distribution of mangrove seeds, reconversion of nearly 55 acres of fallow land to agricultural land, widespread campaign against the conversion of paddy fields by offering better prices to organic farmers, conversion of unused lakes and ponds previously

²² Kerala Institute of Travel and Tourism Studies n(19)

²³ *ibid*

served as sources of diseases like ChikunGuniya, Dengue fever to fish farming and lotus cultivation purposes were some of the achievements of RT initiative in Kumarakom.²⁴

The decentralisation programme in Kerala faces a lot of challenges. Success of RT initiative in Kumarakom shows how growth can trickle down and benefit marginalised sections of the society, justifying the very essence of decentralisation. Other PRIs with tourism potential should be encouraged to emulate the success of Kumarakom.

9. CONCLUDING REMARKS

Developmental experience of Kerala was a puzzle for the social scientists across the globe. Kerala achieved high standard of living matched by many developed countries despite registering a relatively low per capita income. Referred to as Kerala model, the exemplary development model is often attributed as the result of public actions and responsible governance. Nearly four decades has passed and earlier euphoria surrounding the model no longer exists. With many Middle East nations makes mandatory recruitment of local populace by the implementation of NITAQAT laws and other states catching up with Kerala in terms of educational achievements, state could not continue their social sector expenditure without increasing the pace of economic development. The idea of ‘New Kerala Model’ centred on the concept of decentralisation found its place in academic debates. However, over the years, decentralisation which marked a shift from the top-down intervention to the bottom-up approach, was subjected to criticism for its failure to take into account long-term aspirations of the locality. It was almost in the same decade, significance of tourism as an income generator was considered by the state as never before. It is very clear that RT initiative in Kumarakom is nothing short of a big success. The initiative resulted in increased collection of revenue and employment generation in the locality without causing cultural and environmental damage to the locality. There are frequent newspaper reports about the underutilisation of funds and the lapse of remaining amount from many parts of Kerala. In many areas only 30-40 percent of the funds are utilised while rest of them are lapsed. Due to the lack of clarity regarding the project selection, Panchayati Raj Institutions fail to

²⁴ *ibid*

implement the projects within the stipulated time frame, resulting often in non-productive projects. So in this context, local self-governments need to be encouraged to adopt alternate pathways like RT. Some of the commonly highlighted weaknesses of decentralisation like the failure of local self-governments to beef up its own resources, failure to take off agriculture and industry, neglect of marginalised sections, etc..., can be avoided to a great extent, if alternative methods like RT is followed. Successful methods like RT can be considered and replicated in more tourist spots. This will provide an alternative income source for local self-governments and ensure that growth will trickle down to the lowest strata of society.

INSTITUTIONAL MENDICANCY: A CASE FOR EMPOWERING PRIs

Ananya Jha*

ABSTRACT

Decentralisation is a key aspect of democracy. According to the principle of subsidiarity, the most proximate government is generally capable of governing the people. After more than two decades of passing of 73rd and 74th Amendment Acts, a quite consistent implementation of the legal provisions can be seen throughout India. However, merely adhering to the legal provisions is no indication of the health of the local-level institutions. The paper examines the extent of powers accorded to the Panchayati Raj Institutions in terms of functional devolution, financial autonomy and their involvement in the planning process. The work is doctrinal in nature and employs a descriptive method to dissect concepts, facts and theoretical frameworks and subsequently to summarise findings.

* B.A LLB (3rd Year), National University of Study and Research in Law, Ranchi. Email id- ananyamimi.07@gmail.com

1. INTRODUCTION

The establishment of local-level governing bodies finds its roots in the tussle between two ideologies in the constituent assembly debates on the inclusion of Article 40 in the Indian Constitution. The tussle was between Gandhi's vision of governance through decentralised village Panchayats and the notion of centralised parliamentary-democratic governance on western lines which was commonly held by some of the members of the constituent assembly.

During the constituent assembly debates, many members had spoken for accommodation of Gandhi's philosophy in the Constitution.¹ Gandhi had been fundamentally opposed to the parliamentary order.² The constitutional order envisioned by Gandhi was that of innumerable village republics based on the spirit of *satya* and *ahimsa* and indirectly elected governments at the state and central levels. Mahatma Gandhi believed that encouraging people's participation and thus democratising the local-level governments were of utmost importance. Thus, for Gandhi, independence began from the bottom. Dr. B. R. Ambedkar, however, envisioned a constitutional order based on the western theories of separation of powers, a federal structure, citizenship, fundamental rights, stability of the executive, etc. Dr. Ambedkar viewed development as a top-down process.

The whole of the Indian Constitution can be said to be designed on the lines of Ambedkar's idea of constitutional order. However, it is in the case of Article 40³ where we see a conscious effort to accommodate the Gandhian philosophy, by instructing "the state to organise and empower village Panchayats as units of self-government."⁴ It seemed almost impossible to most of the members to reconcile a 'parliamentary' constitutional philosophy

¹ Peter Ronald deSouza, 'Institutional visions and Sociological imaginations: The Debate on Panchayati Raj' in Rajeev Bhargava (ed.), *Politics and Ethics of the Indian Constitution* (Oxford University Press 2009).

² Ravi S. Srivastava, 'Panchayats, Bureaucracy, and Poverty Alleviation in Uttar Pradesh' in Niraja Gopal Jayal, Amit Prakash and Pradeep K. Sharma (eds), *Local Governance in India: Decentralisation and Beyond* (Oxford University Press 2006).

³ Article 40: The State shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government.

⁴ Thomas Pantham, 'Gandhi and the Constitution: Parliamentary Swaraj and Village Swaraj' in Rajeev Bhargava (ed), *Politics and Ethics of the Indian Constitution* (Oxford University Press 2009).

with a ‘Gandhian’ philosophy. Gandhian philosophy, therefore, took the form of constitutional morality when it was incorporated as a Directive Principle of State Policy.

Article 40 did not have any legal enforceability and was at most a reflection of India’s constitutional morality. Currently, the provisions governing the local-level governments are enshrined in Articles 243 to 243-O under Parts IX and IXA of the Indian Constitution. The early attempts at introducing holistic decentralisation at the local levels were encapsulated by the Balwant Rai Mehta Committee Report (1957), Ashok Mehta Committee Report (1978) and Singhvi Committee Report (1986).

The Balwant Rai Mehta Committee recommended introduction of a three-tier Panchayati Raj system which would comprise:

- a) Gram Panchayats at the village level;
- b) Panchayat Samiti at the block level; and
- c) Zilla Parishad at the district level.

This committee suggested that the members of Panchayat Samiti and Zila Parishad should be indirectly elected. It also envisaged the Panchayati Samiti as the executive body and the Zila Parishad as the advisory, co-ordinating and supervising body.

The Ashok Mehta Committee went further in its aim to empower local-level governments. The Committee’s report recommended giving constitutional sanctity to the local-level governments. It recommended that the establishment of Panchayati Raj Institutions (PRIs) should be made compulsory and that the members must be elected. This report discussed many other elements which were later incorporated into the amended provisions governing local-level governments; for instance, the provision requiring the Comptroller and Auditor General auditing the accounts and submitting his report to the governor, state legislatures entrusting the Panchayat with executive and administrative powers, setting up of a finance commission every five years for reviewing the Panchayat finances, etc.

The L. M. Singhvi Committee report that came in 1986 evaluated the reasons for decline in PRIs. According to this report, the decline in PRIs was a result of lack of research, evaluation and monitoring, along with absence of political will.

The Eighth Five-Year Plan⁵ of the Planning Commission highlighted the need for increasing the level of participation of people in local-self governing bodies, thereby strengthening these bodies. One of the objectives of the eighth Five-year plan was to create/strengthen people's institutions at the district, block and village levels. The report of the Planning Commission acknowledged that the developmental activities/schemes in which people actively participate have a greater chance of success and are cost effective as well. Moreover, people's involvement would also lead to greater accountability. The report iterated that, "People's initiative and participation must become the key element in the whole process of development."

Thus, even before the passage of the Constitution (Seventy-third) Amendment Act, there already was a vast literature on the subject of decentralisation, which to a large extent guided the provisions of the Amendment Act.

PRIs could be accorded constitutional sanctity in 1993 with the 73rd Amendment Act. This amendment was driven by the concerns of the policy community and the political elite for improving governance, especially in rural India.⁶ The concerns were regarding the inefficiency of the implementation structure due to which the benefits of the developmental programmes could not reach the target population. It was felt that decentralised planning could be a viable solution as the central programmes had failed in benefiting the marginalised sections of the society. Thus, "it would not be an exaggeration to state that earlier attempts to decentralise were driven by explicitly developmental and administrative considerations, rather than by concerns about democracy and decentralisation."⁷

⁵ Planning Commission, *The Eighth Five-Year Plan* (1992)

<<http://planningcommission.nic.in/plans/planrel/fiveyr/8th/vol1/8ch1.htm>> accessed on 13 June, 2017.

⁶ Peter Ronald deSouza, *The Struggle for Local Government: Indian Democracy's New Phase* (Oxford University Press 2003).

⁷ Niraja Gopal, 'Introduction' in Niraja Gopal Jayal, Amit Prakash and Pradeep K. Sharma (eds), *Local Governance in India: Decentralisation and Beyond* (Oxford University Press 2006).

The 73rd amendment was followed by the Constitution 74th Amendment Act in June, 1993 which gave constitutional validity to municipalities in urban areas. “Before these amendments, organisation, election and administration of local bodies were governed and regulated by the respective state legislations. Their functioning was not at all satisfactory and *ad hocism* was prevalent. In order to strengthen grassroots democracy, it was thought prudent to accord Constitutional sanctity to them.”⁸

2. AUTONOMY FOR RURAL LOCAL BODIES

The Parts IX and IXA of the Constitution of India have been drafted in such a manner that the state government is given a lot of leverage and discretion while determining the scope of power of the local self-governments. This discretion is in terms of devolution of three Fs, i.e., functions, funds and functionaries. Although there are mandatory provisions regarding regular, free and fair conduction of elections, auditing of finances at the local government level, etc., these provisions mostly deal with the institutional and structural aspects of local governance instead of empowering the local-level governments concretely.

1. Functional Autonomy

Schedule XI enlists 29 items in whose matters the rural local bodies may exercise power. Additionally, the Sixth Schedule lists out the sectors where executive powers are devolved upon Autonomous District Councils. One of the main complications in functional devolution is that the 29 items on which local governments can exercise power are also state subjects, which inevitably leads to ‘undue interference by the State.’⁹

Previous judicial rulings have also emphasised the legislative as well as executive powers held by the state governments with respect to the matters enlisted in Schedules XI and XII. In *Society for Preservation of Environment and Quality of Life v. State*, it was held that, “The matters enumerated in Schedule 12...continue to be a state subject and the State’s

⁸ Durga Das Basu, *Commentary on the Constitution of India* (8th edition, LexisNexis Butterworths Wadhwa 2012) 8571.

⁹Second Administrative Reforms Commission, *Local Governance: An Inspiring Journey Into The Future* (2007).

executive power being co-extensive with the subjects of legislation does not in any manner go out of its hands except to the extent that the laws are made by the Legislature.”¹⁰

Article 243(G) guides the devolution of functions. On a close examination of Article 243(G), it is revealed that it enables three separate and distinct operational processes of functional decentralisation; albeit at the discretion of the States. The first is the ‘endowment’ of ‘powers and authority’, ‘devolved powers and responsibility over planning’ and ‘entrusted schemes for implementation’. “Art. 243G is an enabling provision...It is for the state legislature to consider legal conditions and make the law accordingly. The devolution of exercise would also be open to the state to eliminate or modify.”¹¹ Thus, even though the constitution of the local-level bodies has been ensured by the Indian Constitution, the extent of autonomy these bodies will enjoy largely depends on the states. The centre cannot intervene when it comes to making laws for the local governments, as these come under the State List.

To discourage state interference in local-governance, the Second Administrative Reforms Commission¹² had recommended amendment of articles 243G and 243W to make it mandatory for state governments to vest power and authority in local bodies, consistent with the XI and XII Schedules of the Constitution. It had suggested a clear delineation of functions for each tier through activity mapping and passing of a framework law to formalise the relations between the state and local governments. It also suggested that five additional subjects be included in Schedule XII as part of the responsibility of urban local bodies. This report had further emphasised the building of capacity of local governments to discharge their functions effectively. “Strengthening organisational and management capacity, constant training and human resource development activities, conversion of state agencies into expert manpower pools providing guidance and support on demand, strong federations, pooling of resources, talent and management practices, ability to attract expertise available outside government to meet the growing need for high quality human resources in public

¹⁰AIR 1997 AP 381.

¹¹ *U.P. Gram Panchayat Adhikari Sangh v. Daya Ram Saroj*. (2007) 2 SCC 138.

¹² Second Administrative Reforms Commission (n 9).

management are some of the crucial challenges in enhancing the capabilities of local governments.”¹³ These recommendations have not been incorporated yet.

In any case, the existence of a strong legal framework for the assignment of functions to local bodies does not automatically mean that they are empowered and endowed to become units of self-governance. In many states, the governments prefer rules and executive orders for delegation of power to the local governments instead of assigning functions through a statute.¹⁴ Moreover, the local governments do not enjoy exclusive functional domain as parastatal bodies, NGOs, Community Based Organisations, etc., constantly challenge their authority.¹⁵ Another problem in functional devolution is that most of the developmental functions that the local governments are entrusted with are resourced by central government schemes; the local governments are provided with tied funds attached to these schemes and consequently funds remain unavailable for locally evolved plans.¹⁶

A number of Centrally Sponsored Schemes (CSSs) and plan schemes are being implemented by the Panchayats. Substantial tied funds are being transferred to them for fulfilling these functions. However, this was not earlier accompanied by a corresponding increase in devolution of untied funds to the Panchayats.¹⁷ Now, however, states have been provided greater flexibility with respect to 10 % of funds under CSSs.¹⁸

The parastatal bodies, which are bodies set up in accordance with the directions of the State or Central Governments to plan and/or execute development projects, function totally independent from the local governments and are directly accountable to the state government.

¹³ deSouza, *The Struggle for Local Government* (n 6).

¹⁴ Niraja Gopal (n7).

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ Finance Commission, *Report Of Thirteenth Finance Commission* (2009).

¹⁸ Finance Commission, *Report of Fourteenth Finance Commission* (2013) 161.

The local governments are often divested of their important functions. Such proliferation of parastatals runs counter to the principle of subsidiarity.¹⁹

Another functional unit which has emerged in recent years in the rural scenario are NGOs and Self-help Groups (SHG) However, in terms of numerical strength and operational reach, NGOs are constrained as compared to the PRIs.²⁰ SHGs suffer from a similar problem. In a study on relation between SHGs and PRIs, it was found that half of the rural families think that SHGs have not been able to cover the poorest strata of rural society.²¹

2. Financial Autonomy

According to Article 243H of the Constitution, a Panchayat may be authorised 'to levy, collect and appropriate such taxes, duties, tolls and fees' as is specified in the law. The other statutory sources of funds for a Panchayat are taxes, duties, etc., collected by the respective state governments and assigned to the Panchayats, grants-in-aid from the states and funds received by the states "by or on behalf of the Panchayats".

In *Anil Kumar Gulati v. State of M.P.*,²² the power to levy, collect and appropriate taxes of a local level government was discussed in reference of municipalities, as enshrined in Article 243X. It was observed in this case that, "...the source of power rests with the State legislatures and the Constitution has not empowered the Municipalities to impose taxes on their own." It is clear on a close perusal that Articles 243H and 243X are same *in pari materia*. Therefore, it would not be wrong to apply this observation to interpretation of Article 243H as well. This would substantiate that when it comes to fiscal autonomy in terms of freedom to levy and collect taxes on their own, Panchayats are completely dependent upon the state governments. Here, the law has crippled the Panchayats instead of empowering

¹⁹ According to the principle of subsidiarity, what can be done at lower levels of government should not be done at higher levels of government. The central authority should only perform those functions which cannot be performed at a more local level.

²⁰ Planning Commission, *Report of the Task Force on Panchayati Raj Institutions* (December 2001).

²¹ Kaushik Roy and Rajesh Datta, 'A Consultative Study On Synergy Between Panchayati Raj Institutions And Self Help Groups' (2008) <<http://www.aheadinitiatives.in/pdf/Consultative%20study%20on%20SHG-PRI%20synergy.pdf>> accessed 14 May 2017.

²² AIR 2004 MP 182.

them. PRIs can only collect own revenue if the state government mandates so. As it is, own revenue generation of rural local bodies is abysmally low.

Table 1 contains data regarding own revenue and revenue from other sources collected by PRIs. It is clear from the data that own revenue collection by PRIs constitutes an abysmal proportion of total revenue collected. The statistics point towards a high level of dependency of rural local bodies at all levels on fiscal transfers from the state and central Governments.

Table 1: Proportion of Own and Transferred Revenues of different tiers of PRIs in India²³

Year	Own Revenue				Other Revenue			
	Gram Panchayats	Block Panchyats	Zilla Parishads	Totals	Gram Panchayats	Block Panchyats	Zilla Parishads	Total
1994-95	10.31	0.94	1.13	4.02	86.69	99.06	98.87	95.98
1995-96	10.71	0.98	0.99	3.99	89.29	99.02	99.01	96.01
1996-97	11.05	0.83	0.87	3.73	88.95	99.17	99.13	96.27
1997-98	10.43	0.79	0.77	3.50	89.57	99.21	99.23	96.50
1998-99	N.A	N.A	N.A	6.71	N.A	N.A	N.A	93.29
1999-2000	N.A	N.A	N.A	5.99	N.A	N.A	N.A	94.01
2000-01	N.A	N.A	N.A	6.10	N.A	N.A	N.A	93.90
2001	N.A	N.A	N.A	6.38	N.A	N.A	N.A	93.2

²³ M. Devendra Babu, 'Fiscal Empowerment of Panchayats in India: Real or Rhetoric?' (2009) The institute for Social and Economic Change 229/2009, 9.

-02								
2002	N.A	N.A	N.A	6.84	N.A	N.A	N.A	93.1
-03								6

The central finance commission grants, though they have increased, still comprises relatively only a small amount in terms of per capita, at all levels.²⁴ This is indeed an unhealthy trend because this points towards a compromised financial autonomy for the PRIs as financial help from external sources comes with conditions which limit the functional autonomy of PRIs significantly. Own revenue generation is the best way to increase autonomy, efficiency, credibility & accountability of Panchayats.²⁵

Some of the states have reported long delays, of even more than a year, in the transfer of funds to rural local bodies, without furnishing any reasons. Moreover, data shows that many states have regularly issued at-source or mandated deductions from the devolved funds.²⁶ Although the 73rd and 74th Constitutional Amendment Acts devolved much power and functional autonomy to the self-governing bodies, the financial autonomy given to these bodies was comparatively limited. Out of the functions accorded to these bodies under Schedules XI and XII, less than half have any corresponding financial source.²⁷ The local governments are required to concur with the state governments before setting tax rates or changing the bases of collection. Moreover, state governments are not obligated to consult the local governments before changing the tax rates or even abolishing important sources of revenue for these bodies.

In conclusion, at this stage, it may be stated that while the legal framework for devolution of core functions is strong, the fiscal backing for enabling rural local bodies to carry out these functions is still relatively weak.

Thus, it can be reasonably concluded that the amount of financial autonomy accorded to the local-level governments is not sufficient to meet the various needs of the people. The

²⁴ Finance Commission, *Report of Fourteenth Finance Commission* (n 18).

²⁵ Planning Commission, *Report of the Working Group on "Panchayati Raj Institutions and Rural Governance* (2012).

²⁶ Second Administrative Reforms Commission (n 9).

²⁷ Anand Sahasranaman and Vishnu Prasad, 'Sustainable Financing for Indian Cities' (2016) <<http://www.ifmr.co.in/blog/wp-content/uploads/2014/09/Sustainable-Financing-for-Indian-Cities.pdf>> accessed on 12 September 2016.

principle of subsidiarity implies that matters are best handled by the least centralised competent authority. Following this, these institutions need to be adequately empowered—both functionally and financially—to enable them fulfil the role envisaged for them in the Constitution.

3. REVIEWING THE FUNCTIONING OF PRIs

According to the State of the Panchayats Reports (published in 2006, 2008 and 2010), there has been proper implementation of the mandatory provisions of part IX of the Constitution in the last decade or so.²⁸

However, the provisions leave devolution of power at the discretion of the respective states. In a bid to evaluate the degree of decentralisation which has occurred in different states, the Ministry of Panchayati Raj initiated the Panchayat Empowerment and Accountability Incentive Scheme in 2005. In this scheme, the states are evaluated on the basis of devolution of three Fs: Functions, Funds and Functionaries.

PRIs have seen many positive changes in recent years. In the 14th Finance Commission Report, special emphasis was given on improving the basic service delivery of the PRIs. For realising this, the Central Finance Commission grant has been divided into two components: Basic grant and Performance grant. In case of rural local bodies, Basic grant will constitute 90% of the total grant, which will be directly transferred to Gram Panchayats.²⁹ Moreover, the union and the state governments cannot impose any additional conditions on release of this grant.³⁰

As per the Guidelines released by the Ministry of Panchayati Raj,³¹ specific functions should be devolved to the different levels of PRIs under various sectors/subjects specified in Schedule XI; this devolution should be in terms of planning, promotional responsibilities and

²⁸ Planning Commission, *Panchayati Raj Institutions and Rural Governance* (2012) (n 25).

²⁹ Ministry of Finance, *Guidelines for the Implementation of Recommendation of Fourteenth Finance Commission* (8 October, 2014).

³⁰ *ibid.*

³¹ Ministry of Panchayati Raj, *Guidelines for Devolution of Functions, Funds and Functionaries to the Panchayati Raj Institutions through Activity Mapping* (27 April, 2009).

implementation. Importantly, this draft stipulates that parallel bodies should not be set up to implement the subjects devolved upon the PRIs and the already existing bodies should also be gradually phased out. However, when the situation at ground level is verified, it is found that in many of the states, devolution of functions is done through executive orders rather than by the respective state Legislatures. Moreover, in many of these states, the executive orders have not yet been operationalised. (Table 2). This shows that the recommendations have not been properly implemented.

Table 2: Progress in transfer of functions in the Tertiary Sector by respective states³²

State	No. Of functions delegated by the Legislature	No. Of executive orders issued	No. Of executive orders operationalised	No. Of changes in allied Acts
Andaman & Nicobar islands	0	14	13	0
Andhra Pradesh	13	8	8	0
Arunachal Pradesh	0	12	12	12
Assam	0	10	0	0
Chandigarh	0	9	0	0
Chhattisgarh	11	11	11	11
Dadra and Nagar Haveli				
Daman & Diu	18	16	13	0
Goa	3	0	0	0
Gujarat	22	0	22	22
Haryana	17	7	6	1
Himachal Pradesh	28	28	28	2
Jammu & Kashmir	23	23	23	0

³² Tata Institute of Social Sciences, 'Where Local Democracy and Devolution in India is heading towards?' (Ministry of Panchayati Raj, 2015) 101.

Jharkhand	13	10	1	0
Karnataka	28	28	28	28
Kerala	27	27	27	27
Lakshadweep	7	8	8	0
Madhya Pradesh	7	9	7	5
Maharashtra	25	25	24	2
Manipur	2	2	2	0
Odisha	14	14	14	0
Puducherry	0	0	0	0
Punjab	8	8	8	0
Rajasthan	13	13	13	6
Sikkim	28	28	28	0
Tamil Nadu	24	24	24	24
Telangana	8	15	15	1
Tripura	7	7	7	0
Uttar Pradesh	15	1	0	0
Uttarakhand	2	10	4	0
West Bengal	24	24	24	0

Note: Tertiary functions include Adult education, Health and Sanitation, Rural Housing, Drinking water, Poverty alleviation programmes etc. as per the report cited above. There are in total 28 tertiary functions.

Even as a mere implementing agency, the condition of PRIs is not very strong. This can be studied in terms of implementation of CSSs. There are innumerable CSSs associated with one or other of the twenty-nine subjects enlisted under the Eleventh Schedule of the Constitution. According to Article 243(G), states have to ensure that the Panchayats are endowed with ‘powers and authority’ for the ‘implementation of schemes...in relation to the matters listed in the Eleventh Schedule.’³³

³³ 243G. Powers, authority and responsibilities of Panchayats Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

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

In spite of such explicit provision, most of the CSSs are being implemented through the respective Departments and Ministries of the Central Government and even through NGOs.³⁴ As clear from Table 3, the PRIs are not exercising the decision-making powers attributed to them under the different CSSs. Direct involvement of PRIs in planning and implementation of CSSs “does impact outcomes positively by making interventions more appropriate, location-responsive and user-friendly.”³⁵ Through proper activity mapping, wherein each scheme is unbundled into smaller activities and sub-activities and specific activities and sub-activities are allotted to particular levels of PRIs, it can be hoped that involvement of PRIs in the implementation process will improve.³⁶

Table 3: Percentage of decision-making activities out of total possible activities in CSS by respective tiers of PRIs³⁷

State	Gram Panchayat	Block Panchayat	Zilla Parishad
Andaman & Nicobar Islands	67		
Andhra Pradesh	51	14	3
Assam	56	0.00	0.00
Bihar	52	35	3
Gujarat	71	0.00	5
Haryana	55	12	8
Karnataka	54	50	0.00
Kerala	73	63	32
Maharashtra	46	27	2
Manipur	50	0.00	0.00
Odisha	44	12	8
Rajasthan	53	13	2
Tamil Nadu	56	47	17
Telangana	78	100	3

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

³⁴ Second Administrative Reforms Commission (n 9).

³⁵ Planning Commission, *Panchayati Raj Institutions and Rural Governance* (2012) (n 25).

³⁶ Ministry of Panchayati Raj (n 34).

³⁷ Tata Institute of Social Sciences (n 35) 134.

Another problem is the large number of CSSs and other schemes and plans, with often overlapping mandates. Sub-Group of Chief Ministers on Rationalisation of CSS has recommended reducing the number of CSS to not more than 30.³⁸ PRIs, however, are not, or rather should not be, mere implementing agencies. They constitute the third tier of government and hence they should have a significant role to play in the planning process. Article 243ZD of the Constitution mandates formation of District Planning Committees (DPC) in each district for consolidation of plans made at rural and urban levels and preparation of Draft Development Plan. DPCs play a salient role in local governance in that they help bring local concerns on the national forefront by assimilating plans made at the local level at higher level. However, in many of the states, the DPCs are not performing their functions adequately. Table 4 shows that many of DPCs had not even prepared integrated plans till 2015.

Table 4: Proportion of districts with integrated district plans in respective states³⁹

States	Proportion of districts with integrated plans (2015)
Andaman & Nicobar Islands	0.67
Andhra Pradesh	0
Arunachal Pradesh	0.06
Assam	0
Bihar	1.00
Chandigarh	0
Chhattisgarh	1.00
Dadra & Nagar Haveli	0
Daman & Diu	0
Goa	0
Gujarat	1.00
Haryana	1.00
Himachal Pradesh	0

³⁸ NITI Aayog, *Report of the Sub-Group of Chief Ministers on Rationalisation of Centrally Sponsored Schemes* (October 2015).

³⁹ Tata Institute of Social Sciences (n 35) 140.

Jammu & Kashmir	0
Jharkhand	1.00
Karnataka	0.83
Kerala	0
Lakshadweep	0
Madhya Pradesh	0
Maharashtra	1.00
Manipur	0
Odisha	1.00
Puducherry	0
Punjab	1.10
Rajasthan	1.00
Sikkim	1.00
Tamil Nadu	1.00
Telangana	0.90
Tripura	0
Uttar Pradesh	0
Uttarakhand	1.00
West Bengal	0.11

Note: Chandigarh, Dadra & Nagar Haveli, Goa, Jammu & Kashmir, Kerala, Lakshadweep, Madhya Pradesh, Manipur and Puducherry have non-functional DPCs.

Most of the state Acts have adequate provisions for the formation and functioning of DPCs but these provisions are not being followed at the ground level.⁴⁰ In Bihar, Himachal Pradesh and Gujarat, for example, DPC meetings have not been held effectively since the constitution of DPCs.⁴¹

Decentralised planning begins from the Gram Sabha. The Manual on Integrated District Planning⁴² has given special emphasis on participative planning at the rural level. At

⁴⁰ PRIA, *Status and Functioning of District Planning Committees in India* (November 2009).

⁴¹ *ibid* 32.

⁴² Planning Commission, *Manual for Integrated District Planning* (2008).

the Gram Sabha level, identification of issues is done. The Manual recommends involving special interest groups such as SHGs, campaigning for improving people's participation at this stage. However, better participation at the Gram Sabha level becomes difficult when we consider that in most of the states, the suggestions and recommendations of the Gram Sabha are not binding on the Gram Panchayats and there is no requirement of quorum in Gram Sabha meetings which greatly undermines the significance of people's participation in the decision-making process.⁴³ Real decentralisation can never occur until Gram Sabhas are empowered to protect the interests of the village community and given real functions in terms of planning and implementation.

4. CONCLUSION

Article 40 of the Constitution endeavours to enable PRIs to function as institutions of self-government and PRIs are vouched as the third tier of government. However, it is a misnomer to call PRIs the third tier of government. Rather, PRIs are administrative bodies which are essentially used for implementation of plans developed at higher levels of government. The reforms introduced in recent years also focus on the service-delivery aspect of PRIs and treat PRIs as mere implementing agencies. Furthermore, PRIs are not functioning effectively even as implementing agencies.

The goal of a more decentralised democracy has not yet been met. Although the 73rd and 74th Amendment Acts resulted in the constitution of local-level governments, the states still have much discretion. The local-level bodies have very little autonomy when it comes to decision making. Apart from the inadequacy in the Constitutional provisions in properly strengthening these bodies, serious gaps can be found in the implementation aspect also. The data compiled in this paper shows inadequate functional devolution to these bodies as well as inadequate funds allocated and available to them.

Development schemes, NGOs and other people's groups have a specific set of objectives and are one-dimensional. Panchayati Raj Institutions, on the other hand, are not one-dimensional groups; these are democratically elected bodies, responsible to the whole population of a Panchayat. Moreover, although the people's groups, Community Based Organisations and NGOs benefit the people in many ways, for sustainable development and

⁴³ Planning Commission, *Panchayati Raj Institutions and Rural Governance* (2012) (n 25).

for strengthening democracy at the grassroots level, permanent political institutions, i.e., PRIs are essential. For rural development to occur, it is pertinent that PRIs are given more autonomy and that an environment conducive for symbiotic relationship between PRIs and other institutions working for promoting rural development is created. Thus, further rural development demands an imaginative and organic approach, much like the Gandhian one.

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 73rd 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

** 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

1. INTRODUCTION

Panchayati Raj Institutions (PRIs) were introduced in India vide the 73rd 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.¹ The Ministry of Rural Development, which is the nodal ministry for the implementation of the 73rd 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.² 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.³

¹ 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

² 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

³ 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.⁴ 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.⁵

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.⁶ 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.⁷ 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.⁸ Peoples' movement for total sanitation initiated by the Panchayat of Pilocode drew laurels from all over. A baseline survey squad combined with several meetings

⁴ Ibid, p. 41

⁵ Ibid, p. 43

⁶ Ibid, p. 45

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

⁸ *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.⁹

Such a story is not an exception but a proper utilisation of all the policies and provisions extended to the PRIs under the 73rd 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.¹⁰ 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.¹¹ 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:

⁹ *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

¹⁰ 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>

¹¹ *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

- 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.¹²

The 11th 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.¹³

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

¹² *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>

¹³ 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.¹⁴ 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.¹⁵

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

- 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:¹⁷

- 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.

¹⁴ See supra note 11

¹⁵ See supra note 12

¹⁶ 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

¹⁷ 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.¹⁸

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.¹⁹

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.²⁰ 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

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ 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.²¹

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.²² 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

²¹ *ibid*

²² 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.”²³ 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.²⁴

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.

²³ ibid

²⁴ 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.²⁵

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.²⁶ 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,

²⁵ *ibid*

²⁶ *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.²⁷

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.²⁸

²⁷ *ibid*

²⁸ 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

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.²⁹ 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.³⁰ The Solid Waste Management Rules, 2016 has provided a regulatory framework for management of solid waste in all areas.³¹ 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 2022.³² 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.”³³

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

²⁹ *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>

³⁰ *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

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

³² *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>

³³ 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.³⁴ There has also been laid down duties of Waste generators and Authorities which state:³⁵

- 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.

³⁴ Solid Waste Management Rules, 2016

³⁵ Salient Features of Solid Waste Management Rules, 2016, available at 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.³⁶

³⁶ 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.³⁷ One of the most comprehensive guidelines on implementation of Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA Act) were issued on 21st May 2010 which included advice to the States to: Amend laws, rules, executive instructions on mines & minerals, MFP, excise, money lending, etc.³⁸ 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

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

³⁸ Guidelines by Ministry of Panchayati Raj, available at 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.³⁹ 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.⁴⁰ 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

³⁹ 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>

⁴⁰ 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.⁴¹ 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'

⁴¹ 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.⁴² 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.

⁴² 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.⁴³ 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.⁴⁴ 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

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

⁴⁴ 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.

TOWARDS AN EFFECTIVE PARTICIPATORY LOCAL SELF-GOVERNANCE

Jyotsna Nisha* & Sayantani Bagchi**

ABSTRACT

The overall progress of the Indian villages depends upon the upliftment of rural masses, socially, economically and politically. Effective people's participation in the democratic processes provides voices to the otherwise voiceless rural masses who toil under extreme conditions of poverty, illiteracy and inequality. The present model of Panchayats was created keeping in mind the Gandhian ideology of Gram Swaraj and self-sufficiency of villages. Gandhi said: "The village problem has to be solved by the villagers alone." Gandhi's idea of people's participation in development of rural areas is still applicable to Indian villages. However, despite the constitutional status granted to Panchayats as a body responsible for local self-governance in India, the overall progress of villages and implementation of a large number of development schemes is not at par with the desired outcome. The increasing gap between Panchayats and the results that they were created to ensure has to be reduced and people's active involvement can go a long way in achieving the same. Through the present paper, the authors have traversed through the road towards ensuring effective people's participation amidst the system of local self-governance in India. A descriptive method has been adopted for the purpose of analysing the evolution of people's participation and identifying the present developments in that direction.

* Research Assistant (Law), Centre for Regulatory Studies, Governance and Public Policy, West Bengal National University of Juridical Sciences, Kolkata. E-mail id: jyotsnanisha91@gmail.com

* * Research Assistant (Law), Centre for Regulatory Studies, Governance and Public Policy, West Bengal National University of Juridical Sciences, Kolkata. E-mail id: [sayantanibagchib11@gmail.com](mailto:sayantaniibagchib11@gmail.com)

1. INTRODUCTION

The central tenet that runs across the Constitution of India is democracy. Democracy is essentially a tool in the hands of the country's masses to liberate themselves from despotism and inequality as reflected in Gandhi's words, "freeing a man from political and social enslavement and from economic exploitation" is democracy. In harmony with such a notion, is also the opening sentence of the Preamble of our Constitution "We, the people... adopt, enact and give to ourselves this Constitution" which signifies that the power is ultimately vested in the hands of the people. Ideally, the expression 'people' should constitute all the people living in this country, including those residing in the remotest corners. Democracy would be truly inclusive when these people acquire a sense of self-governance through community participation. Through universal adult suffrage, people do participate in the democratic processes but the outcomes of it might not be at par with their expectations. Here it is necessary to empower them in such a manner so that they can be in control of their immediate needs and social, political and economic aspirations.

Therefore, for a democracy to become meaningful, strengthening the grassroots institutions is of utmost importance. Local self-government institutions are bodies constituted at the grassroots level for the better administration of local affairs. These institutions comprise representatives directly elected by the local people at regular intervals of time. The objective of these institutions is to meet with the local needs, relieve the centre and the state governments of administrative burden, secure an effective development administration, promote political consciousness among the rural masses, decentralise power and authority and make participatory democracy a success. Importance of local governance in a democratic set up can hardly be underestimated. In developing countries such as India, local self-government institutions provide impetus to democratic principles and at the same time act as a means to provide the much-needed participation of the masses in the socioeconomic transformation of the nation. Given the unjust circumstances and gross inequality that the villagers in India live with, the need for adequate measures designed to voice their grievances and to ensure their participation cannot be denied. The State being the supreme authority entrusted with the responsibility of safeguarding the interests of its citizens must discharge its solemn responsibility "to promote the welfare of the people by securing and protecting as

effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”¹

2. LOOKING THROUGH THE LENS OF HISTORY

Throughout the ancient and medieval periods, Indian people despite being governed by some authority or the other have all along enjoyed a greater say in their political lives. The idea of ‘grama’ (village) and ‘jana’ (people) go hand in hand. Concepts of ‘Vidatha’² in the ancient Indo-Aryan literature, ‘Sabha’³ in the early Vedic periods and ‘Samitis’⁴ in the post-Vedic period indicate that not only did these bodies exercise effective check on the tyrannical exercise of authoritative power (by the kings) but also ensured adequate autonomy to the people of the society.⁵ Similarly, accounts of villages acting as units of self-administration and ensuring popular participation can be gathered from Kautilya’s Arthashastra, Mahabharata, Manusmritis and other primitive documents.⁶ Evidence of self-governance during the rule of the Chola, Pandya and Chalukya dynasties in the southern part of India provide a convincing picture of popular participation in local-level decision-making. Mauryan rule, which was more of a centralised nature encouraged the village folks in improving the conditions of the villages and rewarded those who played exemplary roles. During the Gupta period, village autonomy grew stronger and gained considerable authority.⁷ It may be assumed that till the end of the Mughal period, the villages continued to be regarded as units of self-administration though the magnitude of independence given to them kept varying. However, the position began to undergo significant changes in the colonial period with the advent of the British rule. The British in its venture to convert the Indian

¹ Art. 38 Constitution of India

² A social institution representing wide number of folk population performing a number of functions in an democratic set up

³ ‘Sabha’ comprised the elite members who exercised effective control over the king’s power.

⁴ Samitis were considered to be a popular assembly.

⁵ Lakshmeshwar Dayal, *State and The People: Political History of Government of India* (Mittal Publications first edition 1998) 50,51

⁶ Pratap Chandra Swain, *Panchayati Raj: The Grassroots Dynamics in Arunachal Pradesh* (APH Publishing, 2008)14, 15.

⁷ Lakshmeshwar Dayal, *State and The People: Political History of Government of India* (Mittal Publications first edition 1998) 50,51

model of local self-governance into a western model of local government robbed the Indian model of its rootedness. One reason behind this may be the fact that their main purpose behind coming to India was to trade and then they eventually designed the system of governance to suit their own needs overlooking the needs of the rural masses. The colonial government expanded its operational ambit through a handful of bureaucrats and elites who were totally indifferent to the people's needs. The poorest of the masses with no voice of their own ended up as the worst sufferers in the hands of the zamindars, bureaucrats and the upper castes.

In the initial years, efforts towards establishing local governments were made by Lord Mayo, who passed a resolution on Provincial Finance in 1870⁸ and thereafter Lord Ripon who passed the Resolution on Local Government in 1882.⁹ In 1909, certain recommendations were passed by the Royal Commission on Decentralisation.¹⁰ This process gained momentum in 1919 with the Montague-Chelmsford reforms through which local self-government became a provincial transferred subject and the idea of popular control in the local bodies was given recognition. In 1928, the Simon Commission was entrusted with the responsibility of studying the role and efficacy of the local self-government in India and the system of administration in general. The Commission recognised local self-governance as 'a vital link in the chain of organisms that make up the Government of the country' and was instrumental in bringing to the notice of the Government certain irregularities with respect to local governance in India.¹¹ Thereafter, the Government of India Act, 1935 which marked the end

⁸ Under this resolution of 14th December 1870 passed by Lord Mayo, certain subjects were transferred to the provincial governments by the Central Government. Provincial governments were allowed to devise for themselves a mechanism whereby local taxes could be collected to meet the expenses of the local people.

⁹ Lord Ripon who introduced the elective system at the local level is considered to be the father of modern self government in India and the Resolution of 1882 passed by him (which is considered to be the Magna Carta of local self governance in India) marks the beginning of local self governance in India. He considered that administrative efficiency and public education constituted the primary reasons behind empowering local governments. See Ram Narayan Prasad, *Urban Local self Government in India* (Mittal Publications 2006) 109

¹⁰ The Commission recommended for the devolution of administrative powers on the local governments. In addition to that the commission recommended that the local governments must be entrusted with powers with regard to finance, public works, hospitals, land revenue, taxation (subject to the scrutiny of the Centre and provinces) etc. see M. Anees Chishti (ed), *Committees and Commissions in Pre-independence India, 1836-1947: 1903-1912* (Mittal Publications 2001) 79-84

¹¹ Kartik Chandra Rout, *Local Self-government in British Orissa, 1869-1935* (Daya Books 1988) 17

of diarchic administration brought about extensive development when compared to all other steps taken under the British rule in the realm of local governments by assigning the task of local self-governance to the Provinces.

In the post independence era, the concern for local self-governance found a symbolic expression in the country's supreme law, i.e., the Constitution, in the form of a directive to the States. The opinion of the Constituent Assembly varied significantly on the question of incorporating the idea of Panchayat into the Constitution. While a major chunk of the members argued in favour of the outlook of Ambedkar expressing strong disapproval towards such incorporation, the others sided with the ideology of Gandhi who believed in the power of the villages in bringing about path-finding changes. Amidst strong disagreements, the idea of Panchayats found mention in the Constitution in the form of Article 40, which directed the State to "take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government" primarily due to the efforts of K. Santhanam, A. Ayyangar and Rajendra Prasad.¹² However, this symbolic incorporation did not provide formal recognition to the Panchayats. Such a deliberate omission to guarantee local institutions with constitutional protection gives adequate reasons to infer that an inclusive democracy suited to the needs of the Indian masses was not something that was desired for at that point of time and rather transplanting the model as envisioned by Ambedkar was considered to be a pressing need.

3. AMBEDKAR V GANDHI

The Constituent Assembly chose to remain silent on matters concerning village empowerment and, hence, the concerns of the rural masses remained distant from articulation at the time when the Constitution was made. Despite repeated demands by some members of the Assembly, the role of villages as units of administration was overruled. The difference in opinion arose out of two sets of ideas born in the minds of two of the greatest visionaries of that time.

¹² K C Sivaramakrishnan, 'local government' in Sujit Choudhury, Madhav Khosla, Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (OUP 2016)562
Lakshmeshwar Dayal, *State and The People: Political History of Government of India* (Mittal Publications first edition 1998) 303

Mahatma Gandhi was perpetually against the notion of centralisation of power and relied on the effectiveness of a decentralised form of government as evident from his remark, “True democracy cannot be worked by twenty men sitting at the centre. It has to be worked from below by the people of every village.” His idea of democracy was directed towards the poor and the helpless. He went further in saying that India should not imitate any western model of governance and rather should build its own suited to its needs. Indian villages should be ‘self-contained,’ capable of managing its own affairs and ‘self-supporting units’ is what he actually wanted. He laid emphasis on the development of Indian villages as Gandhi believed that true democracy lies in emancipating villages from the clutches of all forms of inequality. The villages and its people were central to his idea of Gram Swaraj and he was convinced that with intelligent guidance, villagers could serve as the agents of change. An ideal village with Panchayats to govern them in his eyes should be armed with education, medical needs, sanitation, light, ventilation, capacity to grow crops and vegetables, strong willpower, postal and telegraph facilities, etc.

Members like M.A Ayyangar in the course of the Assembly debates expressed his strong resentment towards the decision of non-incorporation of Panchayati Raj provisions saying that ‘Democracy is not worth anything, if once in a blue moon individuals are brought together for one common purpose, merely electing X, Y and Z to the Assembly and then disperse.’ Arguing on the need to empower villages in the Assembly, Arun Chandra Guha, observed that “the Gandhian and the congress outlook has been that the future Constitution of India would be a pyramidal structure and its basis would be the village Panchayats...I admit that we require a strong Centre but that does not mean that its limbs should be weak.” In the context of the Panchayat framework in India, this observation seems quite appropriate.¹³

On the other hand, Dr. B. R Ambedkar considering the notion of villages as units of self-administration as undemocratic in nature adopted an extremely hostile approach towards the empowerment of villages and described villages as “a sink of localism, a den of ignorance, narrow-mindedness and communalism.” He strongly believed that involving

¹³ Constituent Assembly Debates

villages in the democratic processes would yield negative results since villages were the source of regressive actions.

The basic problem that lies with the arguments of both the erudite men is that none of them could provide a workable solution to the problems of the poor, the needy, the ignorant and the hungry. While Gandhi emphasised on the need of developing an ideal self-sufficient village, Ambedkar looked down upon the village as units of ignorance and communalism. Yet, Ambedkar's views cannot be criticised merely for the sake of it since his outlook was shaped by the then conditions of Indian villages in which powers were concentrated in the hands of the so-called elites who believed in the subjugation of the village folk and to an extent by his own experiences. The village men have all along been chained prisoners in the hands of casteism, poverty, prejudices, illiteracy and ignorance. However, the saddest part is, both Gandhi and Ambedkar held extreme views on the question as to whether villages have the potential to emerge successfully as units of local self-governance and such a discourse provided no practicable solution. At that point of time, the conditions of the villages were such that absolute power of self-governance could not logically be vested on them since India was in the process of reviving from the heap of ruins and the need for a strong centre could not be dispensed with. May be that is the sole reason why the strong dissent of Ambedkar had to bend before Gandhi's ideal and all that could be done was to provide a mention of Panchayats in the Constitution as a token of respect for the great visionary Mahatma Gandhi.

4. THE EFFICACY OF THE 73RD AMENDMENT AND BEYOND

The Constitutional 73rd Amendment Act 1992 has a chequered history. With the passage of time, the Constitution, as it stood originally proved its incapacity to run on the basis of the structure assigned to it initially. The need for a much more inclusive form of governance grew stronger. With the aim of securing adequate community participation and involving people at the grassroots level, A Study Team of the Committee on Plan Projects (Balwantrai Mehta Committee) was appointed by the Government of India which served as the forerunner in the matter of establishing Panchayati Raj Institutions (PRIs). The Ashok Mehta Committee was appointed by the Janata Government in 1977 under Morarji Desai

(which expressed strong interest in assigning a meaningful role to the Panchayati Raj) to examine the state of affairs pertaining to the PRIs. Realising the potential of the villages as gathered from the experiences of Maharashtra and Gujarat, the Committee through its report dissected the existing position with regard to PRI implementation highlighting the need for granting autonomy to the villages in terms of administration and finance.¹⁴ The Report also focussed on the need for utilising human resources in the developmental processes, suggested a viable organisation of grassroots councils to mobilise the participation and active support of the people and also laid down a future course of action. Further, the Committee suggested structures with a development orientation at two levels-district Panchayats and Mandal Panchayats (covering 15,000 to 20,000 people) at the grassroots level. Its other recommendations were open participation of political parties in Panchayati Raj elections and constitutional protection to further extend decentralisation of power. The Committee recommended that these institutions participate in development activities in the areas of agriculture, forestry, cottage industries, welfare activities, and the like. With the expansion of anti-poverty programmes in the 1980s and the creation of district rural development agencies and other similar organisations at lower levels, it was necessary to integrate the local system with these programmes.

The C. H. Hanumath Rao Working Group on District Planning was set up in 1983¹⁵ and then the G. V. K. Rao Committee in 1985 to review the existing administrative arrangements for rural development and poverty alleviation programmes.¹⁶ The latter recommended strengthening the Zila Parishad level, endorsed the recommendations for district-level planning of C. H. H. Rao's working group, and suggested better integration of bloc and lower-level planning with lower-level PR councils. Another Committee headed by L. M. Singhvi in 1986 prepared the concept paper on Panchayati Raj¹⁷ that said PRIs should be closely involved in the planning and implementation of rural development programmes at lower levels, and recommended that the Panchayats should be made financially viable by

¹⁴ Lakshmeshwar Dayal, *State and The People: Political History of Government of India* (Mittal Publications first edition 1998) 307

¹⁵ *Report of the Working Group on District Planning, vol. I and 2* (New Delhi: Planning Commission, 1983).

¹⁶ *Report of the Committee to Review the Existing Administrative Arrangements for Rural Development and Poverty Alleviation Programmes* (CAARD) (New Delhi: Department of Rural Development, Ministry of Agriculture, 1985)

¹⁷ *Concept paper on Panchayati Raj*, Ministry of Agriculture, New Delhi.

combining two or three villages in one Mandal Panchayat. It also supported the recommendations of the G. V. K. Rao Committee for integration of the government's administrative structures with the PRIs.

It took nearly three years for the legislative Bill to become an Act, it began with the Rajiv Gandhi government's introduction of a Panchayati Raj Bill in 1989. That measure was passed by the Lok Sabha but failed to gain the requisite majority in the Rajya Sabha. The V. P. Singh government tried to push a Panchayati Raj Bill in 1990, but it lapsed with the dissolution of the then Lok Sabha. In 1991, the Congress government again introduced a Bill on Panchayati Raj with some modified provisions; it was referred to the Select Committee, then was considered by a Joint Parliamentary Committee, and finally went to the full Parliament. It was passed by the Lok Sabha on December 22, 1992, and by the Rajya Sabha on the following day. After ratification by 17 state assemblies, including West Bengal and Bihar (both opposition-ruled states), the president signed the Bill and it went into effect on April 24, 1993. Since then, it has been implemented in all the states. The need for constitutional base for Panchayati Raj was felt because state governments were not enthusiastic about the creation of Panchayati Raj bodies and having to share power with them. In fact, some states even took power back from these bodies. Giving constitutional status to these bodies lent them a certain dignity which is essential to make these bodies viable and responsive institutions. In India's Constitution, local self-government and Panchayati Raj was a state subject, and the central government could not pass any legislation concerning them. Hence, the 73rd Constitutional Amendment Act.¹⁸ The Amendment has the effect of introducing Part IX (Articles 243 to 243O) and the Eleventh Schedule to the Constitution.

The main characteristics of the Act are: (1) establishment of a Gram Sabha comprising all the voters in the Panchayat area, and establishment of a three-tier PR system (except in states whose population is under 2,000,000) with Panchayats at the village, intermediate, and district levels (2) provision for direct election by the people of the members

¹⁸ Hoshiar Singh, 'Constitutional base for Panchayati Raj in India- The 73rd Amendment Act' Asian Survey Volume 34, No.9 p. 818-827

of all Panchayats (3) provision that members of the Lok Sabha/Rajya Sabha and the State Legislative Assembly from the area would continue to be members of Panchayats with the right to vote in their meetings but not in the election of chairpersons of intermediate and district-level Panchayats, nor to be those chairpersons (4) establishment of five-year terms for each Panchayat, with elections to be held under the supervision, direction and control of the state election commission, and if superseded in midterm, an election to be held within six months for the remaining period of the five-year term only.

The Act provides for the reservation of seats for Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion to their population in a Panchayat area, and has further reserved chairperson seats for SC and ST candidates in all three tiers in direct proportion to their total population in the state, with one-third of these seats reserved for SC and ST women. The Act also provides that one-third of the seats in the Panchayats at all levels will be reserved for women, including SC and ST women.¹⁹ It directs the states to carry out that reservation by rotation in every Panchayat at each level. It has left to the states the question of reserving seats for backward classes.

Thus, the concept of Panchayati Raj has undergone changes since its inception, expanding to cover areas of rural development and economic planning but it is still suffering from a number of shortcomings. Firstly, the present concept does not consider these bodies as agencies that can play an important role in the overall development of rural areas, that is, not as planning and implementation agencies for various rural development programmes. Secondly, there is no clarity about the relationship between these bodies and development administration, because the former has no separate cadre of administration. The dual responsibility of the central administration towards state departments and PR bodies creates confusion and complications. Thirdly, there is no systematic method to involve the 'weaker' sections in the functioning of PR bodies. There is a feeling that PR leaders do not involve the poor in the councils and, therefore, the administration has to intervene to provide the benefits of growth to the poor; on the other hand, the involvement and control of Panchayat office holders in rural development activities is increasing continuously. The only way in which

¹⁹ In 2009, the Union Cabinet increased the cap to 50% for women in local self-government bodies.

these people may participate is through a Gram Sabha, which “is a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level.”²⁰ However, the amount of powers and functions to be vested on the Gram Sabhas is dependent upon a state legislation being brought about to that effect. In most of the cases, the people of the villages are not even formally consulted before laws in that direction are made. Finally, no clear trend is emerging on decentralisation of power. There is a lot of talk about decentralisation to district and lower-level bodies but central government schemes are increasing both in number and in size, raising questions about the kind of decentralisation that is projected. In spite of these shortcomings, the Panchayati Raj system has great potential and capacity to play a major role in the overall development of the economy and polity of a big country such as India.

5. TOWARDS A SUSTAINABLE PARTICIPATORY MODEL

People’s participation has become more of rhetoric today. Participation ideally should include the notions of contributing, sharing or redistributing power and resources, benefits, knowledge and skills to be gained through active involvement of the general masses in making decisions, which concern them. One of the founding fathers of the concept of grassroots democracy, J.S. Mill, wrote, “The only government which can fully satisfy all the exigencies of the social state is the one in which the whole people participate.” Participation is a voluntary process by which people, including the disadvantaged (in terms of income, gender, caste or education), influence or have a say in the decision that affect them. Thus, participation in terms of rural development includes “people’s involvement in decision making process, implementing programmes and sharing it in the benefit of development programmes and involvement in effort to evaluate programmes.”²¹

In this context, throughout the world, a uniform solution has been found, that is, devolution of powers and development with a theory of subsidiarity. But the nuances of practising decentralisation processes vary from society to society and from region to region. Local conditions solidify the nature of decentralisation. It is based on the exercise and re-

²⁰ Art.243 and Art.243A, Constitution of India

²¹ A. P Barnabas, ‘People’s participation in Planning: A realistic approach’ in Ramesh K. Arora and Minakshi Hooja (eds), Panchayati Raj Participation and Decentralisation (Rawat Publications 2009)31.

evaluation of the traditional forms of political representation. While making this exercise it is found that direct democratic mechanisms are increasingly being drawn upon to enable citizens to play a more active role in the decisions affecting their lives. Here also the question unanswered is: how can weak and meek move into the corridors of power? This is followed by the efforts to deepen democracy through decentralisation of powers from the federal government to local institutions through state governments. Democratic decentralisation and participatory governance are the development discourse due to the growing sense of disillusionment with centralised governance. Governance at present is being delivered through different agencies at different levels in a widely spread spectrum. It is strongly believed that in a decentralised governance, the opportunity is wider for people to participate and it provides a wider representation to hitherto marginalised social segments.

The essence of participation lies in exercising voice and choice, and developing the human, organisational and management capacity to solve problems as they arise in order to sustain improvements. Participation must be, therefore, understood as a process by which the people are able to identify their own needs, and share in the design, implementation and evaluation of participatory action. Participation should not only stop at information sharing or consultation, but decision-making and initiating action are important and essential components of participation. Self-initiated actions are a clear sign of empowerment. Once people are empowered, they are more likely to be pro-active, to take initiative, and to display confidence for undertaking other actions to solve problems beyond those defined by the project. This level of participation is qualitatively different from that achieved when people are merely assigned tasks.

Who Participates? The most important characteristic that brings people together to take action is commonality of interest. A group of people who share vision and are willing to channelise their energies in the direction of a holistic form of development are ideal for lending strength to a more participatory local self-governance. As people participate in making new decisions and solving problems, learning takes place. It leads to changes in attitude, behaviour, confidence and leadership. Newly acquired knowledge is, therefore, the first outcome of participation. Empowerment is a result of participation in decision making.

An empowered person is also one who can take initiatives, exert leadership, display confidence, solve new problems, mobilise resources and undertake new actions.

Some of the ways that might lead to an enhanced degree of public participation at the grassroots level can be: Firstly, Panchayats should be empowered to make certain laws on their own which are binding on the population of the concerned village(s). The need for this is impending owing to the independent peculiarities attached to every village. Secondly, there should be a minimum educational qualification prescribed for the candidates contesting for the post of Sarpanch. Sarpanch as the village head is instrumental in guiding the people towards creating a better village setup and, thus, must possess some degree of educational qualification. Thirdly, generation of awareness among the village folk is of paramount importance. This can be achieved through the use of community radio for dissemination of necessary information pertaining to agriculture, natural calamities, etc. Another contribution in this regard can be made by the NGOs working at the rural level mainly focussing on adult education and training.

6. CONCLUSION

Panchayati Raj and people's participation are inseparable. There is an organic relationship between the two in the sense that there can be no meaningful and healthy existence of one in the absence of the other. The PRIs are basically meant to promote self-governance and self-sufficiency on the part of the people. This obviously requires that people should come forward and participate in the management of their own affairs. Similarly, people also require certain institutions with the adequate infrastructure through which they can participate in the development process. The PRIs facilitate this requirement. However, the present state of PRIs and people's participation in India is far from being fully satisfactory. Even after almost two decades of the 73rd Amendment, meaningful implementation of rural development programmes through PRIs and people's participation remains an unfinished agenda, a distant dream which is yet to be realised. Lack of political will on the part of the most of the state governments to really devolve power into PRIs, lack of awareness on the part of the PRI personnel as well as the rural people at large, etc, obstruct effective participation of people in the rural development programmes. The conflict between

the state government and the PRIs over the issue of devolution of powers is another basic hindrance that needs to be properly addressed. Merely providing reservations to women and other marginalised sections do not ensure people's participation in the process. There is a need to rethink that despite laws, representations, and reservations why are the results so depressing? Is there a need to change the way we think about village administration in India? Can a better participatory model voicing the concerns of millions of rural people be designed under the existing framework? We believe yes, once Panchayats are bestowed with wider powers of rule-making and awareness generation, they can push our village societies towards more effective local self-governance.

PESA: A MERE MIRAGE OF INDEPENDENT LOCAL SELF-GOVERNANCE

Aparna Madhu*

ABSTRACT

The Panchayat (Extension to the Scheduled Areas) Act, 1996 also known as PESA was enacted with an aim to extend the mandates of local self-governance that was implemented through the 73rd amendment in 1992 in the form of Panchayati Raj Institutions (PRIs). PESA was enacted keeping in mind the ethnicity of the people living in Scheduled Areas and, therefore, empowered the Gram-Sabhas for local self-governance among the tribal communities. The paper tries to study the present scenario of PESA after two decades of its implementation and how the Central Act is being adopted by the states in true letter and spirit. The paper employs descriptive and analytical methods to reach at generalisations. Secondary sources such as Acts, books and other materials those are available with the Ministry of Panchayat Raj (MOPR), Government of India are used in the study. The paper tries to portray that PESA, which could have been otherwise a powerful instrument in the hands of the community living in the Scheduled Areas stands as a caged tiger with no actual power defeating the whole purpose of its enactment. The paper suggests a way forward on how to overcome this present deadlock, thereby, helping in achieving the actual objective of this Act.

* Research Assistant (Law), Centre for Regulatory Studies, Governance and Public Policy, West Bengal National University of Juridical Sciences, Kolkata. E-mail id: aparna.madu92@gmail.com

1. Introduction

India, a land of diversity, has achieved milestones in every aspect and has emerged as one of the most powerful nations of the globe. Being an epitome of diversity, it constitutes all kinds of population be it urban, rural or other communities living in Scheduled Areas. According to the 2011 census, tribal community comprises 8.6% of the total population which is around 104 million people.¹ Although India has grown rapidly in political, economic and social aspects yet it has always paid less attention towards the interests of the tribal communities. It is not that the government is not taking appropriate steps but it is rather that their rights are being eroded slowly because of the lacunae in the implementation of the laws which are in turn exploiting the indigenous rights of the community.

India is abode to a large number of tribal people who are also known as adivasis. Tribes or adivasis are groups of indigenous people who are dependent on their land for their livelihood, who are largely self-sufficient and not integrated into the mainstream society because of their distinct culture. The tribes are groups of heterogeneous set of people who have their own ethnicity and are also considered the aboriginal population of India.² Before the advent of the British rule, the tribal communities enjoyed all rights over the land in which they inhabited but this was taken away from them by The Indian Forest Act, 1927 enacted under the British regime. After independence, the State Government undertook control of the forest lands and gave the tribal communities right to limited access. Later, the central government took over the control over forests from the state government and tried to preserve the rights of the forest dwellers. The Forest Conservation Act, 1980 widened the definition of forests and the Supreme Court of India also passed a judgement³ where it was stated that forests cannot be conserved only by the employees alone but the forest dwellers should be a part of such conservation. The forests should not only be a part of revenue earning but also serve as livelihood to the forest dwellers. In India, there are three groups of tribes who can be classified as the hill-tribe group, semi-nomadic plain group and the nomadic group. These group are settled in various parts of the country, it includes forest belts stretching from the

¹ <www.censusindia.gov.in>Office of the Registrar General & Census Commissioner, India, Ministry of Home Affairs, Government of India, Accessed on 21-12-17.

² Govinda Chandra Rath, Tribal Development in India : The contemporary debate from landlessness to ownership, Sage publication,2005.

³ National Thermal Power Co. Ltd. vs. Commissioner of Income Tax (SC) (1998)229 ITR 383.

foot-hills of the Himalayas, parts of Himachal Pradesh, Uttar Pradesh in the West, Meghalaya, Tripura, Mizoram, Manipur, Rajasthan and traces of it can also be seen in Tamil Nadu, Kerala and also in Union Territories such as Lakshadweep and the Andaman & Nicobar islands.

The Panchayat (Extension to Scheduled Areas) Act 1996⁴ was enacted to bring in a stronger local self-governance system through the Gram Sabhas in the tribal areas as mentioned in the Fifth and Sixth Schedule Areas of the Constitution. The 73rd Amendment passed in 1992 laid down a stronger and independent three-tier Panchayat system but the Act was not extended to the Scheduled Areas as it was exempted under Article 243M of the Constitution. The exemption of tribal communities was made keeping in mind their distinct culture. The Constituent Assembly made constant efforts for providing them with a separate system of governance. But there are reasons for which the government machinery fails to bring in proper and adequate facilities for the backward communities which have resulted in issues such as economic backwardness, land alienation, cultural, social and educational backwardness, etc. Therefore, PESA was enacted on 24th December 1996 to extend tribal self-rule in the areas mentioned in the Fifth and Sixth Scheduled Areas by the Gram Sabhas.

2. A Perspective

Part IX of the Constitution of India was inserted vide the 73rd Amendment, 1992 that came in force on 24th April, 1993. Part IX converted Panchayats into independent institutions of local self-governance. Article 243M and Article 244 of the Constitution exempt Schedule Areas and tribes from the application of Part IX of Constitution but on similar lines in Article 243M(1), special powers have been bestowed to the Parliament to legislate any law which shall extend to the Scheduled Areas and tribal areas.

The Scheduled Areas are largely dominated by the tribal communities who have their own distinct customs and practices. They can also be termed as custodians of our natural

⁴ The Gazette of India, The Provision of Panchayat (Extension to Scheduled Areas) Act, 1996; Act 40, 24 December 1996 (1996)

resources as they spend their life in those habitats. The distinct characteristic of these people urged the government to bring in special laws which shall bring them to the mainstream Panchayat system but in sync with their own culture and distinctiveness. Keeping the special needs in mind, the Government of India had set up a committee under the leadership of Duleep Singh Bhuria, whose suggestions were accepted on the matter. PESA recommended the independent working of Gram Sabhas in making decisions relating to the tribal community. The Act not only focused on the present issues of land acquisition, forest rights, etc., but also paved the way for future law-making in relation with tribes.⁵

3. Constitutional Provisions

The Constitution of India is the supreme law which lays down the fundamental structure, principles, procedures, policies, etc., governing the society and its people. Article 14 of the Constitution lays down the principle of equality where it mentions that every person shall be equal before law and there shall be equal protection of the laws within the territory of India and no discrimination on the grounds of religion, race, sex or place of birth shall prevail. The tribes being a part of India should be subjected to such privileges and protection. The constitutional provisions regarding the Scheduled Tribes can be classified into two types, viz., to protective and developmental under Article 19(5) and 15(4) respectively. The Constitution vest powers in the hands of state government for making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes and PESA is an example of such a special provision. All these provisions become futile if there is no proper mechanism for implementation. The problem then arises that how to protect the rights of these tribal communities without their ethnicity being lost. This issue can be answered through the 73rd Amendment in 1992 which prioritised on making the local self-governance stronger through the three tier Panchayat system. The Amendment especially exempted the Schedule Tribes and areas mentioned in the Fifth Schedule from its ambit, therefore, the requirement of a new Act especially governing these people came into existence in the form of PESA.

⁵ Gaurav Redhal and Upasana Daity, Rights of Tribals In India With Respect To Access To Justice, IJSARD, Vol 2 Issue 1.

The Fifth and Sixth Schedule with reference to Article 244 in the Indian Constitution ensure historic guarantee to the tribal community in India and these provisions are the backbone to their legal framework. To preserve their ethnicity, the makers acknowledged the need for special legislation to administer areas dominated by the tribes. The special legislation also aimed at protecting the tribes from external vulnerability, filling up the gaps and bringing them into the mainstream, to preserve their land by regulating stricter rules of land acquisition.

4. Analysis of the PESA Act

Grassroots democracy has been made possible under the 73rd Amendment, 1992, which breaks the hierarchy of delegated powers from the central government to state government and promotes a bottom-up approach. The bottom-up approach curbs the power of the central government and passes it to the lowest unit of democracy which is the Gram Sabhas or the village assemblies. PESA being the most powerful Act enacted to protect the rights of the tribes extended this Panchayat system in the nine states mentioned under Schedule Five and some states under the Sixth Schedule consisting of North-Eastern states, where autonomous councils are absent.

PESA vests enormous powers in the hands of the Governor, who is appointed as the sole protector of PESA and if required he/she can also take action to amend any laws that are inconsistent with PESA. The Gram Sabhas also play an important role in PESA and is all pervasive in the Scheduled Areas. They have been given extensive powers to deal with any issues that involve the Scheduled Tribes. Section 4 of the Act is very critical since it states that no state can pass any Act that is inconsistent with the central Act, PESA 1996. Section 5 implements the Act in actuality as it prescribes a time limit for amending the other laws, which are inconsistent with the said Act which is one year from the date of passing of the said Act which expired on 23-12-1997. Therefore, any provision that is not in consistency with PESA is considered null and void.⁶

⁶ Biswas Sudipta, Implementation of PESA: Issues, Challenges and way Forwards, IRJSS, Vol. 4(12), 49-54, December (2015).

Under PESA Act, the Gram Sabhas have been bestowed with absolute powers and the state legislature has been given an advisory role to ensure proper functioning of the Panchayats and Gram Sabhas. This system of delegation of powers represents the principle of subsidiarity, which can be explained in a manner where Panchayats at higher levels should not try to curtail the powers of the lower levels and there shall be independence throughout. There are many powers and functions that are given to the Gram Sabhas.⁷ These are as follows:

- (i) Protection of traditional belief, culture of the tribal communities;
- (ii) Resolution of the local disputes;
- (iii) Prevention of land alienation;
- (iv) Management and protection of the common properties based on their traditions;
- (v) Management of village markets;
- (vi) Rights to control production, distillation and prohibition of liquor;
- (vii) exercise of control over money-lending;
- (viii) any other rights involving the Scheduled Tribes.

The Act suggests that the Governor and the Tribes Advisory Council should follow harmonious construction of laws and should work towards the welfare and should give importance to tribal self-governance. Though PESA is considered to be one of the most powerful Acts being the backbone of tribal legislation, there are many issues and limitations plaguing the effective implementation of the provisions of the Act.

5. PESA a Mere Mirage of Local Self-Governance

PESA was enacted to make the Scheduled Areas in the Fifth Schedule self-sufficient by empowering the Gram Sabhas as centres par excellence. The main object was to decentralise the power of the central and state governments and vest it in the hands of the local governments for independent and self-sufficient governance. But PESA failed to

⁷ Section 4, Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.

achieve its objectives in true letter and spirit making the Act a mere puppet in the hands of the bureaucrats and the political clergy.

When we study the Act we may confront many areas with loopholes which create deadlocks preventing an effective implementation. There are lot of ambiguities in definition, for example, the definition of ‘Village’ or a ‘Gram Sabha Unit’ is not very clear creating a question of limit of jurisdiction. There is also ambiguity with the term ‘Minor Forest Produce’ which is not defined clearly. The law was brought in by the Ministry of Rural Development where it has mentioned its role but the two other ministries such as the Ministry of Tribal Affairs and the Ministry of Panchayati Raj which actually should interact for implementation is absent. The whole structure has been differentiated in three views; one is of the central government; one is of the state government and one of the local governments which have now come to a deadlock. Table.1 depicts the actual scenario of the implementation of the Central Act in different states.

Table 1: State Government laws in Compliance with PESA

States	Land Acquisition	Excise	Forest Produce	Mines and Minerals	Agri produce market	Money lending
Andhra Pradesh	N	N	N	N	N	N
Madhya Pradesh	Y	Y	N	Y	Y	N
Chhattisgarh	Y	Y	N	Y	Y	Y
Maharashtra	N	N	Y	N	N	N
Gujarat	N	Y	N	Y	Y	Y
Odisha	N	Y	Y	Y	N	Y
Himachal Pradesh	Y	Y	Y	Y	N	N
Rajasthan	N	N	N	Y	N	Y
Jharkhand	N	N	Y	N	N	N
Telengana	N	N	N	N	N	N

(Source: MOPR, Government of India; Accessed on 20/10/2017)

‘Y’ denotes the provision is PESA compliant. ‘N’ denotes the provision is yet not PESA compliant.

The above chart depicts how many states have fully complied with the provisions of PESA by amending their own state laws in accordance with the Central Act. There are states that represent better compliance rates such as the states of Himachal Pradesh, Odisha and Madhya Pradesh and on the other hand there are states such as Jharkhand, Telegana, Andhra Pradesh and Rajasthan which are not at all complying with the provisions of PESA. The main purpose of the Act gets defeated if there is no proper compliance made by the State Government for the welfare of the Scheduled Area as mentioned in the Fifth Schedule. The below-mentioned table speaks about Districts under each states that have complied with PESA.

Table 2: Notified Fifth Schedule Areas

States	PESA District (Both Partly and Fully covered)	PESA District (Fully covered)	PESA District (Partly Coverd)
Andhra Pradesh	5	0	5
Madhya Pradesh	20	5	15
Chhattisgarh	19	13	6
Maharashtra	12	0	12
Gujarat	11	4	7
Odisha	13	6	7
Himachal Pradesh	3	2	1
Rajasthan	5	2	3
Jharkhand	16	13	3
Telegana	4	0	4

(Source: MOPR, Government of India; Accessed on 20/10/2017)

The chart above depicts similar information as the first where PESA has not even been implemented in some of the districts of the mentioned nine states. In places it is partially implemented but there is no state till now which has been able to implement the Act fully. This shows the gap between enactment and implementation of the Act.

6. The Way Forward

The non-implementation of PESA in true letter and spirit not only indicates flaws in the enactment of the law but also highlights the political scenario of a country which is not able to appropriately implement welfare laws. The Act brings out the differences of working between central, state and local governments and shows that there are no serious efforts made to implement the law at the ground level. The present position of tribal communities depict that they are trying to be a part of the mainstream society but have not been able to do so due to lack of adequate protection of their social, cultural, political and economic rights which in turn results in backwardness, non-participation and non-acceptance among the general public.

There are difficulties in the implementation of PESA such as legal difficulties, political difficulties, gaps and inconsistencies, clashes between PESA and other existing laws, customary practice and lack of political will, which can't be overlooked. The inference from the above charts that may be drawn is that even after 20 years of implementation of PESA, the centre and the states are still in dilemma whether or not to adopt the provisions in actuality. The failure and non-implementation at all levels is defeating the objectives of the Act.

The whole situation can be dealt when all the three levels come together and work towards the betterment of the community. The central government should force the state governments to adopt PESA in true letter and spirit by giving them time limits within which there should be mandatory compliance. The states should form high-power Committees which shall advice and also monitor the activities at the Gram Sabha level. The Gram Sabhas should be more active and there must be a reporting to the Committee in the form of Annual Reports. The principles of accountability and transparency should be followed at all levels. Active participation of the tribal people, especially women, in the Gram Sabhas should be promoted. Some of the Acts such as the Land Acquisition Act, Forest Act, etc., should be amended so as to bestow powers to the Gram Sabhas to regulate their own affairs.

7. Conclusion

PESA, which can be a powerful tool in the hands of the tribal community, is presently working as a mere mirage of independent local self-governance. The implementation of PESA should be considered immediately in its true letter and spirit. The central government and the state governments should come together to retrieve the local Gram Sabhas, and bring them back to mainstream governance. Tribal Communities are a predominant part of our society; tribal people's contribution in the preservation of natural resources and in the maintenance of folk culture and tradition is immense. Hence, protection of their rights and quality of their living should be of utmost importance. The government should promote active participation of tribes, especially tribal women; and focus on issues such as capacity building, transparency and accountability of the community. Assistance may be taken from NGOs and Civil Society Organisations for creating awareness campaigns so that more and more tribal people come forward for protection of their own rights.



**CENTRE FOR REGULATORY STUDIES, GOVERNANCE AND PUBLIC POLICY
THE WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES,
KOLKATA**

E : crsgpp@nujs.edu

B : <https://nujs.edu/nujs-crsgpp.html>

P: +91(033) 2335 7379 (Ext. 7210)