

73RD AMENDMENT ACT OF 1992

Significance of the Act

This act has added a new Part-IX to the Constitution of India. This part is entitled as 'The Panchayats' and consists of provisions from Articles 243 to 243 O. In addition, the act has also added a new Eleventh Schedule to the Constitution. This schedule contains 29 functional items of the panchayats. It deals with Article 243-G.

The act has given a practical shape to Article 40 of the Constitution which says that, "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." This article forms a part of the Directive Principles of State Policy.

The act gives a constitutional status to the panchayati raj institutions. It has brought them under the purview of the justiciable part of the Constitution. In other words, the state governments are under constitutional obligation to adopt the new panchayati raj system in accordance with the provisions of the act. Consequently, neither the formation of panchayats nor the holding of elections at regular intervals depend on the will of the state government any more.

The provisions of the act can be grouped into two categories—compulsory and voluntary. The compulsory (mandatory or obligatory) provisions of the act have to be included in the state laws creating the new panchayati raj system. The voluntary provisions, on the other hand, may be included at the discretion of the states. Thus the voluntary provisions of the act ensures the right of the states to take local factors like geographical, politico-administrative and others, into consideration while adopting the new panchayati raj system.

The act is a significant landmark in the evolution of grassroots democratic institutions in the country. It transfers the representative democracy into participatory democracy. It is a revolutionary concept to build democracy at the grassroots level in the country.

Salient Features

The salient features of the act are:

Gram Sabha

The act provides for a Gram Sabha as the foundation of the panchayati raj system. It is a body consisting of persons registered in the electoral rolls of a village comprised within the area of Panchayat at the village level. Thus, it is a village assembly consisting of all the registered voters in the area of a panchayat. It may exercise such powers and perform such functions at the village level as the legislature of a state determines.

Three-Tier System

The act provides for a three-tier system of panchayati raj in every state, that is, panchayats at the village, intermediate, and district levels³. Thus, the act brings about uniformity in the structure of panchayati raj throughout the country. However, a state having a population not exceeding 20 lakh may not constitute panchayats at the intermediate level.

Election of Members and Chairpersons

All the members of panchayats at the village, intermediate and district levels shall be elected directly by the people. Further, the chairperson of panchayats at the intermediate and district levels shall be elected indirectly—by and from amongst the elected members thereof. However, the chairperson of a panchayat at the village level shall be elected in such manner as the state legislature determines.

The chairperson of a panchayat and other members of a panchayat elected directly or indirectly shall have the right to vote in the meetings of the panchayats.

Reservation of Seats

The act provides for the reservation of seats for scheduled castes and scheduled tribes in every panchayat (i.e., at all the three levels) in proportion of their population to the total population in the panchayat area. Further, the state legislature shall provide for the reservation of offices of chairperson in the panchayat at the village or any other level for the SCs and STs.

The act provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for women belonging the SCs and STs). Further, not less than one-third of the total number of offices of chairpersons in the panchayats at each level shall be reserved for women.

The act also authorises the legislature of a state to make any provision for reservation of seats in any panchayat or offices of

chairperson in the panchayat at any level in favour of backward classes.

The reservation of seats as well as the reservation of offices of chairpersons in the panchayats for the scheduled castes and scheduled tribes shall cease to have effect after the expiration of the period specified in Article 334 (which is presently seventy years, that is, till 2020).

It must be noted here that the above provision relating to the reservation of seats in panchayats (both members and chairpersons) for the scheduled castes is not applicable to the state of Arunachal Pradesh. This is because the state is inhabited fully by indigenous tribal people and there are no scheduled castes. This provision was added later by the 83rd Constitutional Amendment Act of 2000.

Duration of Panchayats

The act provides for a five-year term of office to the panchayat at every level. However, it can be dissolved before the completion of its term. Further, fresh elections to constitute a panchayat shall be completed (a) before the expiry of its duration of five years; or (b) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

But, where the remainder of the period (for which the dissolved panchayat would have continued) is less than six months, it shall not be necessary to hold any election for constituting the new panchayat for such period.

Moreover, a panchayat constituted upon the dissolution of a panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved panchayat would have continued had it not been so dissolved. In other words, a panchayat reconstituted after premature dissolution does not enjoy the full period of five years but remains in office only for the remainder of the period.

Disqualifications

A person shall be disqualified for being chosen as or for being a member of panchayat if he is so disqualified, (a) under any law for the time being in force for the purpose of elections to the legislature of the state concerned, or (b) under any law made by the state legislature. However, no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years. Further, all

questions of disqualifications shall be referred to such authority as the state legislature determines.

State Election Commission

The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats shall be vested in the state election commission. It consists of a state election commissioner to be appointed by the governor. His conditions of service and tenure of office shall also be determined by the governor. He shall not be removed from the office except in the manner and on the grounds prescribed for the removal of a judge of the state high court⁴. His conditions of service shall not be varied to his disadvantage after his appointment.

The state legislature may make provision with respect to all matters relating to elections to the panchayats.

Powers and Functions

The state legislature may endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level with respect to (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the 29 matters listed in the Eleventh Schedule.

Finances

The state legislature may (a) authorise a panchayat to levy, collect and appropriate taxes, duties, tolls and fees; (b) assign to a panchayat taxes, duties, tolls and fees levied and collected by the state government; (c) provide for making grants-in-aid to the panchayats from the consolidated fund of the state; and (d) provide for constitution of funds for crediting all moneys of the panchayats.

Finance Commission

The governor of a state shall, after every five years, constitute a finance commission to review the financial position of the panchayats. It shall make the following recommendations to the Governor:

1. The principles that should govern:

- (a) The distribution between the state and the panchayats of the net proceeds of the taxes, duties, tolls and fees levied by the state and allocation of shares amongst the panchayats at all levels.
 - (b) The determination of taxes, duties, tolls and fees that may be assigned to the panchayats.
 - (c) The grants-in-aid to the panchayats from the consolidated fund of the state.
2. The measures needed to improve the financial position of the panchayats.
 3. Any other matter referred to it by the governor in the interests of sound finance of the panchayats.

The state legislature may provide for the composition of the commission, the required qualifications of its members and the manner of their selection.

The governor shall place the recommendations of the commission along with the action taken report before the state legislature.

The Central Finance Commission shall also suggest the measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats in the states (on the basis of the recommendations made by the finance commission of the state).

Audit of Accounts

The state legislature may make provisions with respect to the maintenance of accounts by the panchayats and the auditing of such accounts.

Application to Union Territories

The provisions of this Part are applicable to the Union territories. But, the President may direct that they would apply to a Union territory subject to such exceptions and modifications as he may specify.

Exempted States and Areas

The act does not apply to the states of Nagaland, Meghalaya and Mizoram and certain other areas. These areas include, (a) the scheduled areas and the tribal areas in the states⁵; (b) the hill areas of Manipur for which district councils exist; and (c) Darjeeling district of West Bengal for which Darjeeling Gorkha Hill Council exists.

However, the Parliament may extend the provisions of this Part to the scheduled areas and tribal areas subject to such exceptions and modifications as it may specify. Under this provision, the Parliament

has enacted the “Provisions of the Panchayats (Extension to the Scheduled Areas Act”, 1996, popularly known as the PESA Act or the Extension Act.

Continuance of Existing Laws and Panchayats

All the state laws relating to panchayats shall continue to be in force until the expiry of one year from the commencement of this act. In other words, the states have to adopt the new panchayati raj system based on this act within the maximum period of one year from 24 April, 1993, which was the date of the commencement of this act. However, all the panchayats existing immediately before the commencement of act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.

Consequently, majority of states passed the panchayati raj acts in 1993 and 1994 to adopt the new system in accordance with the 73rd Constitutional Amendment Act of 1992.

Bar to Interference by Courts in Electoral Matters

The act bars the interference by courts in the electoral matters of panchayats. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. It further lays down that no election to any panchayat is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

Eleventh Schedule

It contains the following 29 functional items placed within the purview of panchayats:

1. Agriculture, including agricultural extension
2. Land improvement, implementation of land reforms, land consolidation and soil conservation
3. Minor irrigation, water management and watershed development
4. Animal husbandry, dairying and poultry
5. Fisheries
6. Social forestry and farm forestry
7. Minor forest produce
8. Small-scale industries, including food processing industries
9. Khadi, village and cottage industries
10. Rural housing
11. Drinking water

12. Fuel and fodder
13. Roads, culverts, bridges, ferries, waterways and other means of communication
14. Rural electrification, including distribution of electricity
15. Non-conventional energy sources
16. Poverty alleviation programme
17. Education, including primary and secondary schools
18. Technical training and vocational education
19. Adult and non-formal education
20. Libraries
21. Cultural activities
22. Markets and fairs
23. Health and sanitation including hospitals, primary health centres and dispensaries
24. Family welfare
25. Women and child development
26. Social welfare, including welfare of the handicapped and mentally retarded
27. Welfare of the weaker sections, and in particular, of the scheduled castes and the scheduled tribes
28. Public distribution system
29. Maintenance of community assets.