CHAPTER – 05

EFFICACY OF PANCHAYAT RAJ LAWS FOR CONSTITUTING LEGAL STRUCTURE & FUNCTIONING OF PANCHAYATS

5.1: PANCHAYATS AS LOCAL & OTHER AUTHORITIES

5.2: CONSTITUTION OF PANCHAYATS

5.3: ELECTION PROCESS
   5.3.1: Notification for election
   5.3.2: Procedure in contested & uncontested election

5.4: ELECTION PETITION AND TRIAL

5.5: ADJUDICATION OF ELECTION PETITION

5.6: COMPOSITION OF TALUK & ZILLA PANCHAYATS

5.7: ELECTION OF ADHYAKSHA & UPADHYAKSHA

5.8: MOTION OF NO-CONFIDENCE

5.9: MEETINGS OF PANCHAYAT

5.10: FUNCTIONS, DUTIES & POWERS

5.11: TAXES & FEES

5.12: STAFF OF GRAM PANCHAYAT
CHAPTER – 05

EFFICACY OF PANCHAYAT RAJ LAWS FOR CONSTITUTING LEGAL STRUCTURE & FUNCTIONING OF PANCHAYATS

5.1: PANCHAYATS AS LOCAL & OTHER AUTHORITIES

Karnataka panchayat Raj Act 1993 has been enacted in view of the constitutional obligation on the part of the state to enact an Act within one year from the date of 73rd constitutional Amendment Act 1992 came into force. It is to implement the constitutional provisions at the state level. The Karnataka panchayat Raj Act 1993 has been supplemented by various rules, notifications & amendments.

The power corrupts a man & absolute power corrupts absolutely which ultimately leads to tyranny, anarchy & chaos has been sufficiently established in course of evolution of human history, & all round attempts have been made to erect institutional limitations on its exercise. The doctrine of separation of power as propounded¹ desired to put a curb on absolute & uncontrollable power in any one organ of the government. A legislature, an executive & a judicial power comprehend the whole of what is meant & understood by government. It is by balancing each of these two powers against the other that the efforts in human nature towards tyranny can alone be checked & restrained & any freedom

¹ Montesquieu.-spirit of laws.
preserved in the constitution. Judicial Review is thus the interposition of judicial restraint on the legislative as well the executive organs of the government.

'Judicial review' has been considered as the Basic structure of the constitution. The concept has its origin in the theory of limited government & in the theory of two laws-an ordinary & supreme (constitution of India). From the very assumption that there is a supreme law which constitutes the foundation & source of other legislative authorities in the body polity, it proceeds that any act of the ordinary law-making bodies which contravenes the provisions of the supreme law must be void & there must be some organ which is to possess the power or authority to pronounce such legislative acts void. Thus, If the provisions of the statute are found to be violative of any Articles of the constitution which is the touch stone for the validity of all laws the supreme court & High courts are empowered to strike down the said provisions. Art.13 (2) relates to post constitutional laws & prohibits "the state" from making a law which either takes away totally or abrogates in part a fundamental right. The expression "the state" is to be construed in conformity with Article 12 as judicially interpreted.

In Art 12 the expression "all local or other authorities" is used after mentioning a few of them such as, the government, parliament of India, the government & legislature of each of the states. The term 'state' thus includes executive as well as the legislative organs of the union & states. It is, therefore, the actions of these bodies that can be challenged before the courts as violating the fundamental rights. The term "Authority" means a person or body of exercising power to command. In the context of Article 12 the word "authority means the power to make laws, orders, regulations, bye-laws, notification etc, which have the force of law & power to enforce those laws. "Local authorities" as defined in

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2 Letters by James Adams to Richards Henry, as cited in Pandey J.N. constitutional law of India 43rd ed. p 65
3 Pandey J.N. Constitutional law of India 43rd ed. p 65
4 Keshavananda Bharathi v state of Kerala AIR 1973 SC 1461
5 Art 32 of the constitution of India.
6 Art 226 of the constitution of India.
section 3(31) of the General clause Act refers to authorities like Municipalities, District Boards, panchayats, Improvement Trust & Mining settlement Boards.

With the changing role of the state from merely being police state to a welfare state it was necessary to widen the scope of the expression “other authorities” in Art 12 so as to include all those bodies which are, though not created by the constitution or by a statute, are acting as agencies or instrumentalities\(^7\) of the government. In modern times a government has to perform manifold functions. For this purpose it has to employ various agencies to perform these functions.

5.2: CONSTITUTION OF GRAMA PANCHAYATS

The constitution (73\(^{rd}\) Amendment) Act 1992 envisages the panchayat Raj system to perform function & powers entrusted to it by the state legislature. Art.243B of the amendment visualizes a three-tier panchayat Raj system. It provides that in every state there shall be constituted panchayat at the village, intermediate & district levels. Art.243C provides that, subject to the provisions of this part the legislature of a state may by law make provisions with respect to the composition of panchayats. However, the ratio between the population of the territorial area of a panchayat at any level & number of seats in such panchayats to be filled by election shall, so far as practicable, be the same throughout the state.

Under the Karnataka panchayat Raj Act 1993, the deputy commissioner may declare any village or group of villages having population not less than 5,000 & not more than 7,000 to be a panchayat area & also specifying its head quarters\(^8\). In the district of Belgaum, chikmagalur, Dakshina kannada, Dharwad, Hasana, kodagu, Shivamoggga, Udpi, Haveri, & Uttara kannada the deputy commissioner may declare a panchayat Area with a population of less than 2,500. However, this is subject to general or special orders of the government. The government as a

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\(^7\) RD shetty v The international Airport Authority of India. AIR 1979 SC 1628.
special case, irrespective of population may order that an area within a radius of 5 kilometers (diameter of 10 kilometers) from the center of a village may declare a panchayat area in such areas of the districts mentioned.\textsuperscript{9}

The deputy commissioner may also declare a panchayat area with a population of either less than 5,000 or more than 7,000 with the previous permission of the government.\textsuperscript{10} The deputy commissioner at the request of a Gram panchayat concerned & by general or special orders of the government may after the previous publication of the proposal by notification,

I Increase or decrease any panchayat area
II Alter the head quarters, name of panchayat area & may also declare that any area shall cease to be a panchayat area\textsuperscript{11}.

The Commissioner by suo-moto or on application made with in 30 days from the date of notification, by any person aggrieved by such notification of deputy commissioner may modify or revise the orders of deputy commissioner. Such revised or modified order of the commissioner shall be published in the official gazette.\textsuperscript{12}

Whether empowering the deputy commissioner to declare village for purposes of the Act is invalid on the ground of excessive delegation of legislative function was the moot question in \textit{Janab A Rizwanulla sheriff gauver V state of Karnataka & others.}\textsuperscript{13}(1993). It was held that the powers conferred on the deputy commissioner regarding declaration of panchayat area & establishment of Gram panchayat under section 4 of KPR Act 1993 is not excessive delegation & lack of any guidance. As regarding the observance of principles of natural justice

\begin{itemize}
  \item \textsuperscript{9} S 4(1), K.P.R.Act 1993
  \item \textsuperscript{10} ibid
  \item \textsuperscript{11} S 4(2), K.P.R.Act 1993.
  \item \textsuperscript{12} S 4 (3), K.P.R.Act 1993.
  \item \textsuperscript{13} 1994(3) kar L.J.240A
\end{itemize}
is concerned, there is an obligation upon the deputy commissioner... The authority concerned will have to receive objections to the draft notification & consider the same & thereafter decide the matter. That is sufficient compliance with the provisions of principles of natural justice. There is no obligation on the state to give individual notices to the residents in that area.

The court further held that the commissioner need not undergo the same procedure as prescribed in section 4(1) of the KPR Act, because there was already a proposal made by the deputy commissioner & there after a notification issued by him after following the prescribed procedure under that provision & the commissioner is sitting in revision thereto. In doing so, it cannot be said that he has only power to demolish the orders made by the deputy commissioner & he can not alter the same. If there is a sufficient material before him & for good reasons he may do so subject to the limitation of powers of revision such as not substituting his own opinion to that of deputy commissioner which is equally cogent or when the deputy commissioner has reached such conclusion on the material on record, which is a plausible conclusion. It was also held that the powers of commissioner are as wide as that of original authority. The court held\textsuperscript{14} that during the temporary vacancy of the deputy commissioner the person succeeding temporarily to his office shall be deemed to be the deputy commissioner & such successor takes the charge of his office can declare the panchayat area & establish a panchayat under section 4(1) of the Karnataka panchayat Raj Act 1993.

Under section 119 of the Karnataka panchayat Raj Act, 1993 for each Taluk there shall be a Taluk panchayat having jurisdiction over the entire taluk, & under section 158 of the Karnataka panchayat Raj Act 1993 for each district there shall be a Zilla panchayat having jurisdiction over the entire district excluding the such portion of Taluk & district as the case may be included in a smaller urban area or

\textsuperscript{14} K G Krishna Murthy V state of Karnataka & others 1998(2) kar L J 441 (DB)
area under the authority of a Municipal corporation, a Town panchayat or industrial Township constituted under law for the time being in force. The Taluk panchayat & Zilla panchayat may have its office in any area comprised within the excluded portion of the taluk & district & in such area may exercise their powers & functions over schools & their institutions under its control or management.

5.3: ELECTION PROCESS

The 73rd Amendment Act, 1992 has made the election to these panchayats mandatory. The Karnataka panchayat Raj Act, 1993 effectuates the 73rd Amendment Act in order to ensure the free & fair elections in the state by adopting various provisions in the Act.

Article 324 of the constitution of India deals with the superintendence, direction & control of the preparations of the electoral rolls for, & conduct of, all elections to the parliament & to the legislature of every state & of elections to the office of president & vice-president held under the constitution shall be vested in the election commission.

Free & fair elections are necessary for fruitful & effective functions of democracy that may be achieved at the grass root level s only by fulfilling the aspirations of the constitution. Thus, Articles relating to elections have to be read in the light of the constitutional scheme & the representation of the people Acts of 1950 & 1951. The superintendence, direction & control of the preparation of electoral rolls for, & the conduct of, all elections to the panchayats which is vested in the state election commission under Article 243K of the constitution of India is similar to the expression used in the Article 324(1) of the constitution.

Article 243-O of the constitution imposes bar to interference by courts in the electoral matters- i.e., (i) the validity of the law relating the determination of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Articles 243K shall not be called in question in any court. (ii) No
election to any panchayat shall be called in question except by an election petition presented to such authority & in such manner as is provided for by or under any law made by the legislature of a state.

In S.A.Aswathanarayan & another V The Returning officer, Somanahalli Gram panchayat, Bangalore Rural dist& others (2001)\(^\text{15}\) it was held that the jurisdiction of the High court to interfere with the ongoing election process at an intermediate stage stands excluded not only in regard to parliamentary & Assembly elections as per Article 329, but even in regard to panchayat elections in terms of article 243-o of the constitution.

In Surendra Babu V state of Karnataka & others\(^\text{16}\) (1996) it was contended that Article 243-ZG (this is similar to Article 243-O of 73\(^{rd}\) Amendment Act 1992) barring jurisdiction of the courts to examine the validity of any law relating to delimitation of constituencies as unconstitutional on the ground that the provisions of the constitution introduced by amendment must be in conformity with the constitution consequence that the provision barring such judicial review is invalid. The court held that barring the jurisdiction in matters of delimitation of constituencies or allotment of seats thereto by Article 243-Zg does not affect the basic features of the constitution.... when the entire concept of local authority being made a constitutional authority, election thereto; reservation & also making provisions for delimitation of constituencies, prohibiting interference by courts etc., is one package. If, in a package the entire setup is introduced in the constitution, then it cannot be said that such a provision would offend the basic features of the constitution. As basic features of the constitution are not affected by Article 243-ZG, which bars interference of courts in electoral matters, the said provisions are not therefore ultravires the constitution, the court opined.

\(^{15}\) 2001(1) Kar. L.J.108.

\(^{16}\) 1996(3) Kar L.J.168
Sections 123 & 124 of the Act, 1993 provide for delimitation of territorial constituencies & also provide for delimitation subject to the general or special order of the state election commission by deputy commissioner. Section 163 provides for a delimitation of a territorial constituency, subject to general or special orders of the state election commissioner. The state Government has amended these provisions by Act8 of 2000. Section 7 of the amended Act provides for the substitution of the word “Government” for the word “state election commissioner” in section 121, 122, & 123 of the principal Act... In substance the power vested with the state election commissioner has been taken away & is given to the deputy commissioner & the Government......... Article 243-K (4) provides for law being made with respect to all matters relating to or in connection with the election to the panchayat. Law relating to delimitation/ adjustment to a constituency also can be made by the legislature since it is a matter relating to or in connection with the election to panchayat... The delimitation & adjustment of constituencies is an act of precedence in the matter of conduct of elections, & it can not be said to be part of electoral process. The delimitation or the adjustment is an act preceding to the preparation of the electoral rolls & conduct of elections & therefore it cannot be held that in terms of the amended Act deputy commissioner? Government cannot also work delimitation or adjustment17

Under the Karnataka panchayat Raj [reservation of seats in Gram panchayats by Rotation] rules 1998 & The Karnataka panchayat Raj Reservation of seats in taluk panchayat & Zilla panchayat by rotation] rules 1998 the seats reservation to SC, ST, BC & WOMEN shall be allotted by rotation to the constituencies having highest percentage of population belonging to the said communities. While allotting the seats by considering the reservations there may arise some problems, wherein the people of minority & other weaker section of the society in some constituencies may be ignored continuously with or without the

17 Chennigappa & another V state of Karnataka & others, 2000 (6) Kar. L.J.163A
knowledge of authority. In such circumstances, the equality rights to contest in
the election will be denied to the people of those sections. Since, right to equality
is also a basic structure of constitution, there should be a provision to question the
validity of the allotment of constituencies & delimitation of constituencies in the
court of law. Thus, surendra babu’s case was wrongly decided as regarding the
delimitation of constituencies.

It would be necessary to refer to a short coming that relates to the omission
in the Act 1993, to prescribe the competent authority for issuance of the caste
certificate. There is not even a reference made in the statute to the effect that the
certificate issued by the Tahsildar under the Karnataka scheduled castes,
scheduled Tribes & other backward classes (Reservation of appointments etc.)
(Amendment) Act, 1990 (the Act 7 of 1991 for short), would hold well for the
purpose of the Act. Considering that any claim by a person as belonging to a
particular caste for purpose of contesting an election reserved for that particular
caste has to be supported by a certificate issued by a properly constituted
authority, it is imperative that the legislature has to either prescribe an appropriate
authority under the Act, 1993 or provide that that the certificate issued under the
Act 7 of 1991 would hold good for the purposes of the present Act also. The
nomination paper to be filed by the candidate contesting the election to the Taluk
panchayat is in self-declaratory form & the declaration to be given by a contestant
in support of his claim that he belongs to a particular caste is as found in clause(c).
The Act, 1993 or the Karnataka panchayat Raj (Conduct of election) Rules, 1993
do not state or define ‘competent authority’ whose certificate is required to be
enclosed by the contestant along with his nomination paper. The certificate issued
by the Tahsildar under Act 7 of 1991 is meant exclusively for providing
reservation to the scheduled castes, scheduled Tribes & other backward classes for
appointment to posts in the state civil services & establishments. Such certificate

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18 Dr Ramesh, in his thesis on panchayat Raj submitted to university of Mysore. P.137.
19 1996(3) Kar L.J. 168
issued by the Tahsildar under the Act 1990 can not be made use by the candidate as proof of his / her caste unless & until the Act or the Rules provide for such dual usage of the certificate. Therefore there appears to be a void in this regard which requires the attention of the legislature.  

In Shankarappa & another V. state of Karnataka & others (2007) the issue was boycott of election by section of voters which resulted in election of less than two-third of total number of members of Gram panchayat, not being sufficient to constitute panchayat. An administrator was appointed to Gram panchayat for specified period, pending arrangement being made by state election commission to hold another election for electing such number of members as will make up number required to constitute Gram panchayat. Sub-section 3 of section 8 stating that upon the appointment of the Administrator or the Administrative committee by the deputy commissioner, the persons who were chosen as members of the Gram panchayat earlier to such appointment shall cease to be members of the Gram panchayat & all powers & duties of the panchayat shall be exercised & performed by the Administrative committee or Administrator .The court held this provision has to be understood keeping in mind the provisions contained in sub-section(6) of section 5. Both these provisions have to be harmoniously construed. If it is held that all the 10 elected members, in the instant case, ceased to be members of gram panchayat. & that they automatically vacate their membership then the intendment of the legislature spelt out in sub-section (6) of section 5 in directing that within one month from the date on which the names of the elected members are published, the deputy commissioner shall have to arrange another election for election of such number of members as will make up the required number of members of panchayat would get negated. Moreover, if that were to be the intendment then the legislature would have made it explicit in section 8, the consequence to follow & would have mandated in explicit terms that elections

20 B.Geetamma V Smt Gulfom & others 2003(4) Kar. L.J. 401 D.  
have to be held to the entire body of Gram panchayat consisting of the total number of members. Such a declaration is not made in the provisions contained under section 8. On the other hand sub-section (6) of section 5 specifically provides without enacting any restriction that for the remaining number of members for which no candidate is elected fresh election has to be held within one month. If the legislature had intended that only if the minimum of 2/3 members are returned & for some reason the remaining number of members are not elected then re-election as contemplated under section 6 is permissible & not otherwise the same would have been enacted in the provision. This can not be read into these provisions presuming that there is omission in this regard…. For various reasons voters in a particular place may resort to boycotting the election process. If the result of such undemocratic act on the part of any section of the society were to render the other elected members loose their membership then it would definitely appear to be illogical or irrational. Such an effect the legislature has not intended to achieve while enacting these provisions under section 5 & 8 of the Act. Therefore, the legislative intent, if properly understood would only mean that the effect of the expression ‘the elected members of the Gram panchayat ceased to be the members’ as used in section 8(3) is to state that for the purpose of exercising their duties & functions as such members they cease to have any right or status & not to state that their seats get vacated & the posts become vacant requiring fresh election

Article 243E of the constitution of India says that the duration of the panchayat is five years. It can not be extended & election should be held to constitute panchayat & should be completed before the expiry of the five years from the date appointed for first meeting of panchayat. In Prof B.K.Chandrashekar & others V State of Karnataka (1999) the core question was whether the state Government can ignore the constitutional mandates by

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22 Justice B.S. Patil
23 I.L.R.1999 Kar.2513
delaying the panchayat elections under the guise of some reasons. The High court held in this public interest litigation case that to give effect to the mandate of the constitution under Article 243-E its intent & content, the elections to constitute panchayat is a continuation process has to be held before the expiry of the term of outgoing panchayat. The court further held the panchayats are constitutional institutions, not the creatures of state legislatures. It directed the state election commission to hold the election within six weeks from the date of order.

Post-ponement of elections to panchayat Raj institutions has no place under the constitution of India. The elections to the panchayat Raj institutions are most important, as it is a constitutional obligation under 73rd Amendment Act. It is the duty of the state to conduct the elections to panchayats. Hence, Karnataka panchayat Raj Act has to be amended to avoid post-poning of elections to panchayat Raj institutions.

5.3.1: NOTIFICATION FOR ELECTION

In the next process, for the constitution of Village panchayats, Taluk panchayats & Zilla panchayat the Deputy commissioner will issue a notification of election. The election process to all the three tiers have been regulated in the Karnataka Panchayat Raj [conduct of election] Rules 1993. The election to the Zilla panchayats, taluk panchayats, & Gram panchayats shall be conducted under the superintendence, direction & control of state election commission. Rules 7-11 of Karnataka Panchayat Raj [conduct of election] Rules deals with the duties of various officers of state Election commission. After preparation of electoral roll & list of voters under Rule 4, & 5 the deputy commissioner shall with the approval of the state election fix the date of such election. By notification he may also fix

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24 The word 'ELECTION' means the final selection of the candidate by taking poll when polling is necessary & without taking poll when the candidate is returned unopposed. This term connotes the entire process culminating in a candidate being declared elected.

the last date for making nomination, scrutiny, withdrawal of candidate, etc. Any person may be nominated as a candidate to fill a seat in any constituencies of Zilla, Taluk or Gram panchayats if he is qualified to be chosen to fill that seat under the provisions of the Act. The nomination papers may be filed before the date appointed between the hours of eleven O’clock in the forenoon & three o’clock in the after noon by delivering to the Returning officer at the specified place.

The acceptance of a nomination paper by the returning officer is a decisive factor for a candidate in contesting the election. The candidate is expected to submit all the relevant documents including the caste or class certificate to which he/she belongs, because in a constituency if any seat is reserved for the SCs or ST or for the backward classes, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular class, caste or tribe of which he/she is a member & the said class, caste or tribe is a backward class, SC or ST. If the seat is reserved for women the nomination paper shall contain a declaration that the candidate is a woman.

In Shashikala V State of Karnataka & others (2005) the petitioner being paid consolidated amount of Rs 650/ per month for the work she is doing as cook under the mid day meals scheme for school children sponsored by state government. Her nomination papers filed was rejected on the ground that she holds “office of profit” under the state Government. The High court of Karnataka

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26 Rule, 12.
27 Rule 13
28 Rule 14
29 In the recently held 2009 election for legislative council the nomination paper of an under aged was accepted in northern part of Karnataka-Haveri. However, later in view of direction of the state election commissioner the nomination paper was rejected on the ground of not in order.
30 In the last election (2008) for Shivamogga rural constituency the nomination paper of candidate Kumar swamy was accepted as belonged to SC though later High court of Karnataka has held that the caste certificate was wrongly issued to him. However, MLA was successful in getting the stay to the verdict of the court from the apex court.
31 Rule 14(2)(a)(b)
32 2005(2) kar, L.J. 449
issued direction to the returning officer to accept her nomination papers. It was also held that non-disclosure of employment under the scheme is not fatal to contest the election... Every resident of the Gram panchayat area, whose name is enlisted in the voters list has got statutory right to contest in the elections of the Gram panchayat. Such a right can not be taken away by the executive orders passed by the state Government under Article 162 of the constitution of India. This implies that through the law of the state legislature only there could be restriction upon the persons holding office of profit for contesting elections.

On the presentation of a nomination paper, the Returning officer shall satisfy himself whether the qualifications to contest in the election have been fulfilled or not. This can be done on the date fixed for the scrutiny of nomination papers, which shall be the day immediately following the last date of making nominations or if that day is a public holiday the next succeeding day, which is not a public holiday. In Khatib Irshad Ahmed V. The Returning officer (1998) the petitioner had submitted all the relevant documents & had also produced the required caste or class certificate issued by the Tahsildar on the date fixed for scrutiny to which class he belongs. Of course may be after the appointed time viz 3pm. There was no person who raised any objection in the matter at that time. In these circumstances, the court held that rejection of nomination paper was clearly improper & in violation of relevant rules when there was no objection from any one.

The Karnataka panchayat Raj Act 1993 prescribes the qualifications to contest for the elections to all the three tiers of panchayats. A person shall not be qualified to be chosen to fill a seat in a Gram panchayat, taluk panchayat, & Zilla panchayat unless his/her name is included in the respective electoral roll or in the

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33 Qualifications literally mean limitation or condition to a particular post or position. The constitution of India has fixed the eligibility to contest the election to every citizen in accordance with the various provisions unless he is disqualified on various grounds under the various provisions of the people's representation Act 1951.

34 ILR, 1998 Kar. 1813
list of voters of respective panchayats as the case may be for the time being in force, & unless he/she is qualified under the act, or any other law. Further, a person shall not be qualified to be chosen from a territorial constituency to fill a seat in a Gram panchayat, or Taluk panchayat, or Zilla panchayat unless in the case of a seat reserved for SC or ST or backward classes or women, such person is a member of those castes or class or is a woman.

The 73rd constitutional Amendment has provided for reservation of seats for SC, ST & women in all the three tiers of panchayats. The reservations of seats were also made for the office of president & vice-president of all these three tiers.\(^\text{35}\) Nothing shall prevent the state legislature from making any provision for reservation of seats in any panchayat or offices of chairpersons in the panchayats at any level in favour of backward class of citizens.\(^\text{36}\) However, unless the Article 334 is amended for further period the reservation of seats & special representation under clause (1) & (2) of Article 243-D & the reservation of offices of president & vice-president (other than for women) under clause (4) shall cease to have effect on the expiration of Period\(^\text{37}\) as specified in Article 334 of constitution of India, unless it is amended for further period.

Similar provisions\(^\text{38}\) can be found in the Karnataka panchayat Raj Act 1993 & they are supplemented by various panchayat Raj rules. The qualification to contest in the elections are necessary as the reservation under the Karnataka panchayat Raj Act is a condition prescribed for membership to Gram, taluk & Zilla panchayats. For example in the case of seats reserved for the SC or ST or Backward class & women, no person who is not a member of any of the SC or ST or backward classes or is not a women as the case may be, shall be qualified to be

\(^{35}\) Article, 243-D (4). The distinctive feature is extension of reservation to women also in order to empower them to take active participation in the panchayat Raj Administration.

\(^{36}\) Article 243-D(6)

\(^{37}\) 60 years from the date of the commencement of the constitution of India.

\(^{38}\) Sec 5(2)(3)(4)(5) in respect of Gram panchayats, Sec 123, 138 in respect of Taluk panchayats & sec 162 & 172 in respect of Zilla panchayats
elected to such seat. However, a citizen belongs to SC or ST or Backward class & a woman has no restrictions to contest from the general constituencies. Qualifications for members can be earned when a citizen is not attracted by any of the disqualifications provided under the sections 12, 128, & 167 respectively of all the three tiers of panchayat.

The amendment introduced to section 12(j), 128(1)(j), 167(1)(j) & 58(1-A) disqualifying a person who does not have sanitary latrine from contesting the election has no nexus to the object to be achieved as it results in coming in the way of greater participation of the people in the affairs of panchayat. ...Under section 58(1-A) of the Act it is clear that it is obligatory on the part of panchayat to provide sanitary latrines to at least 10 persons of the house hold every year & to achieve full coverage as early as possible. When such being the case, a villager cannot be compelled to have a sanitary latrine for the members of his family. Having a sanitary latrine also sometimes depends upon the drainage system provided by the panchayats in the villages. If that is so, exclusion of the persons who do not have sanitary latrines from participation in the election is contrary to the very object of greater participation of the people in panchayats. Either under the constitution of India or under the representation of peoples Act, non-possessing of a sanitary latrine by a house hold is not a disqualification for participating in the election. Therefore, exclusion of persons who are otherwise qualified to vote & contest in the election to the panchayats on the ground that they do not possess sanitary latrine is arbitrary & unreasonable. Thus, Provisions inserted to sections 12(j) –Gram panchayat, 128(1) (j)-Taluk panchayat, & 167(1) (j) –Zilla panchayat of the Karnataka panchayat Raj Act, 1993, providing

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39 Secs 11, 127(2), & 166(2) of KPR Act 1993
40 K.P.R.Act 1993
41 Vasanthakumar shetty V. state of Karnataka & others, 2003(3) kar, L.J. 102.
disqualification is unreasonable & arbitrary & unconstitutional. The decision is more rational in view of ground realities.

When a question regarding disqualification of a member is raised the same shall have to be determined by the Assistant commissioner. In the absence of any determination as aforesaid, it is difficult to hold that respondents had lost their membership so as to disentitle them to participate in the no-confidence motion proceedings. If application seeking disqualification of member is made to Assistant commissioner, it is for applicant to pursue his application. In absence of pendency of such application, writ petition is not maintainable.

The Returning officer shall have to examine the nomination papers & shall decide objections which may be made to any nomination & may either on such objection or on his own, after such summary enquiry, if any, as he thinks necessary, reject any nomination on any of the grounds mentioned below;

i) Failure to comply with any provisions of the Act & rules, or
ii) That the signature of the candidate or the proposer on the nomination Paper is not genuine etc.

The Returning officer shall endorse on such nomination paper his decision accepting or rejecting the same & if the nomination is rejected shall record in writing a brief statement of his reasons for such rejections. Then the valid nomination paper shall be affixed on the notice board. Any candidate may withdraw his candidature on the date fixed under Rule 12 before 3 o’ clock by writing to Returning officer.

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[^42]: Ibid, Justice Chandrashekaraih
[^43]: N.Guddappa poojary V assistant commissioner, puttur, Dakshina Kannada (1997) (2) kar. L.J 497
[^44]: Ibid
[^45]: Karnataka panchayat Raj (conduct of Election) Rules 1993, Rule 17(2)
[^46]: Ibid, Rule 17(8)
[^47]: Ibid, Rule 12(iii) the deputy commissioner shall by a notification fix the last day for withdrawal of candidature which shall be the second day after the date for the scrutiny of nominations or if that day is a public holiday the next succeeding day which is not a public holiday.
[^48]: Karnataka Panchayat Raj (conduct of Election) Rules 1993 Rule 18(1)
The Returning officer shall prepare & publish in Kannada a list of contesting candidates. Where a poll becomes necessary the Returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers, & shall allot the symbols in accordance with the Election symbols (reservation & Allotment) order 1968 for the purpose of election to Taluk panchayat & Zilla panchayat. Karnataka panchayat Raj Act 1993 does not provide any provision to contest the election to Gram panchayat on the party basis. For Election to Taluk & Zilla panchayat a candidate set up by a recognized political party in the election shall choose, & shall be allotted, symbol reserved for that party & no other symbol. Any candidate other than candidate set up by recognized political party in the election shall choose & shall be allotted in accordance with the Rules provided, one of the symbols specified as free symbols. Where any free symbol other than one chosen by a candidate set up by unrecognized political party has been chosen by only one candidate at election, the Returning officer shall allot that symbol to that candidate & to no one else. When more than one candidate chooses a free symbol then Returning officer shall decide by lot.

5.3.2: PROCEDURE IN CONTESTED & UNCONTESTED ELECTION
If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken. If the number of such candidates is equal to the number of seats to be filled, the Returning officer shall forth with declare all such candidates to be duly elected to fill those seats. If the number of such candidates is less than the number of seats to be filled in that constituency the Returning officer shall forth with declare all such candidates to be duly elected as may be appropriate & the Deputy commissioner shall with the approval of the state

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49 Karnataka Panchayat Raj (conduct of Election) Rules 1993, Rule 19(1). Validly nominated candidates & not have withdrawn their candidature within the stipulated period.
50 KPR (conduct of Election) Rules 1993 Rule 22(1)
51 Ibid, Rule 22(4)
election commission, by notification, call upon the constituency to elect a person to fill the seat or seats.\textsuperscript{52}

Notwithstanding anything contained in the foregoing sub-rules in the case of election to a Gram panchayat constituency where seats are reserved for SC, ST, BC And women, as the case may be:

\begin{itemize}
  \item[a)] If the number of contesting candidates for the reserved seat or seats is equal to or less than the number of reserved seats to be filled, Returning officer shall declare all such candidates to be duly elected as may be appropriate & where the number of the contesting candidates for the non-reserved seats is more than the number of seats to be filled, a poll shall be taken for election to fill only such non-reserved seats in such constituency.

  \item[b)] If the number of contesting candidates for the reserved seat or seats is more than the number of seats to be filled, but the total number of candidates contesting for the election in the constituency is equal to or less than the number of seats to be filled, the Returning officer shall first select, by lot to be drawn in such manner as he may determine the candidates to be declared elected to the reserved seats out of the candidates qualified to be chosen to fill those seats & then declare candidates so elected to be duly elected to fill the reserved seats & there after declare the remaining candidates to be duly elected to fill the non-reserved seats.

  \item[c)] If the number of contesting candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats & the total number of contesting candidates also exceeds the number of the total number of seats to be filled a poll shall be taken & after the poll has been taken the Returning officer shall first declare those who are qualified to be chosen to fill the reserved seats by securing the largest number of votes to be duly elected to fill the reserved seats & then declare such of the remaining candidates has have secured the largest number of votes to be duly elected to fill the remaining unreserved seats\textsuperscript{53}.

The presiding officer of a poling station or the Returning officer may adjourn the poll in emergency when it is not possible to take the poll at any polling station on account of any natural calamity or for any other sufficient cause.\textsuperscript{54}

Adjournment of poll may be ordered & the fresh poll may be notified at any

\begin{flushright}
\textsuperscript{52} Karnataka Panchayat Raj (conduct of Election) Rules 1993 Rule 29(1)(2)(3)
\textsuperscript{53} Karnataka Panchayat Raj (conduct of Election), Rule 29(4) (a) (b)(c)
\textsuperscript{54} Rule 30(1) of Karnataka panchayat Raj (conduct of election) Rules 1993.
\end{flushright}
polling station if at any election, boot capturing has taken place at a polling station or at a place fixed for the poll.\textsuperscript{55} Fresh poll shall also be ordered in case of destruction, etc., of ballot boxes at any poling station.\textsuperscript{56} The presiding officer shall make separate batch facilities for women electors\textsuperscript{57}. He shall be responsible for sealing of ballot box after poll,\textsuperscript{58} Account of ballot paper\textsuperscript{59}, & spoilt & returned ballot paper\textsuperscript{60}.

The Returning officer shall before he commences the counting, shall maintain secrecy of voting.\textsuperscript{61} He shall first deal with postal ballot paper as provided & start counting of votes as per the Rule 69 of Karnataka panchayat Raj (conduct of election) Rules 1993. The counting of votes to be continuous\textsuperscript{62}. Facilities may also be provided for recounting of votes.\textsuperscript{63} If after the counting of the votes is completed an equality of votes is found to exist between any candidates & the addition of one vote will entitle any of those candidates to be declared elected, the Returning officer shall forth with decide between these candidates by lot\textsuperscript{64} & proceed as if the candidate on whom the lot falls had received an additional vote, then, the Returning officer shall declare the result of election\textsuperscript{65}, & grant of certificate of election to Returned candidates\textsuperscript{66} in prescribed form & obtain from the candidate an acknowledgement of its receipt duly signed by him & immediately send the acknowledgement by registered post to deputy commissioner\textsuperscript{67}.

\textsuperscript{55} Ibid, Rule 32.
\textsuperscript{56} Ibid, Rule 33
\textsuperscript{57} Ibid, Rule 39.
\textsuperscript{58} Ibid, Rule 58.
\textsuperscript{59} Ibid, Rule 59
\textsuperscript{60} Ibid, Rule 60.
\textsuperscript{61} Ibid, Rule 66
\textsuperscript{62} Ibid, Rule 70
\textsuperscript{63} Ibid, Rule 71
\textsuperscript{64} In Sri Murali Vengath V Returning officer AIR 2001 kerala 199, The supreme court has held that the decision by drawing lot in the event of securing equal number of votes is an age old practice & well accepted procedure in democracy & the same can not in any way be held to be unfair or unreasonable or infringing the constitutional rights not it is violative of citizenship Act.
\textsuperscript{65} Karnataka panchayat Raj (conduct of election) Rules 1993 Rule 74
\textsuperscript{66} The expression “returned candidate” means a candidate who has been declared as duly elected.
\textsuperscript{67} Karnataka panchayat Raj (conduct of election) Rules 1993 Rule 75
5.4: ELECTION PETITION AND TRIAL

Election petition should be presented on one or more grounds specified in section 19(1) & 20 before the civil judge (junior division) by any candidate at such election or by any qualified voters at such election together with a deposit of rupees five hundred as security costs within 30 days from the declaration of election of returned candidate.  

An election petition could be filed under section 15 of the Act within the period prescribed & subject to the conditions set forth therein. Further, such an election petition will have to comply with section 15 as well. If the conditions are not complied with, election petition is liable to be dismissed under section 17 of the Act without notice to the other side. Any candidate who is not a party to the proceedings can become a party to the proceedings as provided under section 17(3) of the Act if he complies with the conditions thereto. Provisions regarding candidates being impleaded are also provided thereto. When the Act provides as to who could be the parties before court under section 15,16, & 17 question of invoking a general provision as provided under order 1. Rule 10 would not arise at all, because as to who could be parties before court is regulated by the provisions aforesaid.  

A plain reading of sub-section (1) of section 15 together with the explanation of the phrase' returned candidate' makes it clear that an election petition would not lie when there is declaration of results & there is a returned candidate. In Khatib, Irshad Ahmed, Mohammed Husain & others V The Returning officer, Shishuvinalal Gram panchayat, Shiggon Taluk, Dharwad dist (2000) nominations of six persons for election to four seats reserved for certain categories have been rejected & as such there is no declaration of results nor the returning officer has declared any one of the six as candidate duly elected

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68 Karnataca panchayat Raj Act 1993, Section 15(1),  
69 Mallikarjuana Gouda V principal Munsiff Hubli & others 1995 (4) kar. L.J.510 A.  
70 2000(3) kar L.J. 455A
in the election. In the circumstances, there is no merit in the arguments that only remedy available is in election petition & nothing else...The legislature while making law did not perhaps anticipate a situation of this type & as such no provision is made in the Act to meet contingency; that should not deny the aggrieved party, an opportunity to approach this court under Article 226 of the constitution of India, especially when there is allegation of statutory violation.\(^{71}\)

A petitioner apart from joining as respondents to his petition may claim that the election of returned candidate is void & he himself or any other candidate has been duly elected.\(^{72}\) The election petition shall be accompanied by, as many copies thereof as there are respondents & such copies shall be attested under his signature.\(^{73}\) The petition shall contain concise statement of materials facts & it should also contain statement about corrupt practice with all the details & shall sign & verified in the manner laid down in the civil procedure code 1908 for the verification of pleadings. The petition shall also be accompanied by an affidavit in the prescribed manner in support of alleged corrupt practice & he can claim that election of returned candidate is void & he himself or any other candidate has been duly elected.\(^{74}\)

The civil judge (junior division) shall dismiss an election petition, which does not comply with the provisions of section 15, of Karnataka panchayat Raj Act 1993.\(^{75}\) Where more election petitions than one are presented to him in respect of the same election petition he may, try them separately or in one or more groups. Any candidate not already a respondent shall, upon application made by him to the civil judge (junior division) be entitled to be joined as a respondent. In the panchayat Raj Act 1993, nowhere it is provided for withdrawal of election petition & to file any fresh application on the same cause of action & on the same grounds.

\(^{71}\) Justice B.N. Mallikarjuna. in Shishuvinahal Gram panchayat, Shiggon case
\(^{72}\) Karnataka panchayat Raj Act, 1993, sec 15(2)(a)
\(^{73}\) Ibid, sec 15(3)
\(^{74}\) Ibid, sec 16(1)(2)(3)
\(^{75}\) Ibid, sec 17
In this view of the matter, though the petitioner is entitled to withdraw the petition under order 23, Rule 1 of c.p.c., liberty can not be granted to withdraw the petition under sub-section (3) of order 23 to bring the election petition; it can be cured by way of amendment which is permissible.\textsuperscript{76}

The civil judge (junior division) may upon such terms as to costs & otherwise as he may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in his opinion be necessary for ensuring a fair & effective trial of the petition, but shall not allow any amendment of the petition, which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

The trial of an election petition shall be considered & continuous until its conclusion & trial should be concluded within six months from the date on which the election petition is presented. The petition shall be tried as nearly as may be in accordance with the procedure applicable & civil procedure code 1908, to the trial suits. He may also refuse to examine any witness or witnesses if such witness or witnesses evidence is not material for the decision of petition or that the party tendering such witness or witnesses is doing so on frivolous grounds. The trial of election petition is subject to the provision of Indian evidence Act, 1872 & no document shall be inadmissible in evidence at the trial of the election petition on the ground that it is not duly stamped or registered.\textsuperscript{77}

The civil judge (junior division) at the conclusion of the trial shall make an order-

i) Dismissing the election petition; or

ii) Declaring the election of all or any of the returned candidate to be void; or

iii) Declaring the election of all or any of the returned candidate to be void & the petitioner or any other candidates to have been duly elected.\textsuperscript{78}

\textsuperscript{76} G. Ramappa V H, Maranna 2002(5) Kar. L.J 282A
\textsuperscript{77} Karnataka panchayat Raj Act ,sec17(1) to (9)
\textsuperscript{78} K.P.R.Act, 1993, sec 18(1)
He shall also make an order whether corrupt practice has been proved or not & name the person or persons guilty of any corrupt practice & fix the amount of costs to whom it is payable. The persons who is not a party to the election petition shall not be named in the order that he is involving in corrupt practice unless he is given notice to appear before him & provide an opportunity of being heard as per the Act. 

5.5: ADJUDICATION OF ELECTION PETITION

The civil judge (junior division) shall declare the election of the Returned candidate to be void, if he is of the opinion that the returned candidate is attracted to any of the provisions of section 19(1) & (2) of Karnataka panchayat Raj Act, 1993, which refer to lack of qualifications, existence of disqualifications, corrupt practices & improperly filing of nominations etc. If any person filed an election petition & claims that he or other candidate has been duly elected, then the civil judge (junior division) is of the opinion, that the petitioner or such other candidate received a majority of the valid votes or the petitioner or other candidate could not get the majority valid votes as the votes obtained by returned candidate by corrupt practices, then he may declare the election of return candidate to be void & also declare the petitioner or such other candidate as the case may be, have been duly elected. The decision of the civil judge (junior division) shall be final. If during the trial of an election petition there appears equality of votes between any candidates then the civil judge (junior division) has to decide it by lot.

The following shall be deemed to be corrupt practices for the purposes of this Act; They are: bribery, undue influence, appealing vote on caste, religion, race

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79 K.P.R.Act, 1993, sec 18(2)
81 Ibid, sec. 20.
82 Ibid, sec. 21.
etc., publication of fact which is false, procuring of hired vehicle for the free conveyance of voter, serving liquors, & any other practice which the government may by rules specify to be corrupt practice. The corrupt practices referred to above shall entail disqualification for membership of any local authority for a period of five years counting from the date on which the finding of the civil judge (junior division) as to such practices takes effect under this Act. The civil judge (junior division) shall after announcing the orders made under sec 18 & 19 send a copy thereof to the deputy commissioner.

The above provisions of sections 15 to 24 of Karnataka panchayat Raj Act 1993 shall apply mutatis mutandis in respect of election to Taluk panchayat, the application being to the civil judge (senior division) having jurisdiction & the deposit as security for costs being one thousand rupees. Further the provisions of above sections are also applicable mutatis mutandis in respect of election to Zilla panchayat the application being to the civil judge (senior division) having jurisdiction & the deposit as security for costs for being two thousand rupees.

The decision of the civil judge (junior division) relating to Gram panchayat election shall be final. Any person aggrieved by any decision or order of the civil judge (senior division) in respect of the election to both Taluk & Zilla panchayats may, within thirty days from the date of such decision or order, appeal to the district judge & the decision of the district judge on such decision shall be final. The procedure under the various provisions of civil procedure code, 1908 shall be strictly adhered to before filing the election petition.

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84 Ibid, sec 23.
86 Ibid, sec 132.
87 Ibid, sec 171(1).
88 Ibid, sec 20(2).
89 Ibid, secs 132(2) 171(2).
In G.P. Srinivas V Halappa & others (2003) it was held that the mere fact that the election petitioner secured the next highest number of votes after returned candidate is not a sufficient ground to declare him elected. It is difficult to determine on the principle of fair inference that all the votes secured by the disqualified candidate would have been polled by the election petitioner who secured the next highest number of votes. Considering the fact that the election to Zilla panchayat in the present case was multi-cornered one, the court below rejected the claim of the petitioner. The same does not call for any interference.

In S.A. Aswathanarayana & others v The Returning officer, Somanahalli, Gram panchayat, Bangalore Rural district & others the High court of Karnataka, while dealing with the scope of interference in exercise of writ jurisdiction regarding the dispute of acceptance or rejection of nomination of candidates to Gram panchayat election held that the aggrieved person can seek remedy only by way of election petition, under section 15 of the Karnataka panchayat Raj Act 1993 & Article 243-O(b) of constitution of India. Further, whether the election of a member of Zilla panchayat can be set aside by the state Election commission suo-moto other than by an election petition. In Guru Shantha pattedar V state of Karnataka & others the state election commission suo-moto other than by election petition disqualify the petitioner under section 161(1) (g) of Karnataka panchayat Raj Act, 1993 to hold the office as elected member of the Gulbarga Zilla panchayat on the ground that he was holding an office of profit.

The court held that Article 243-O (b) of constitution of India, which states no election to any panchayat, shall be called in question except by an election petition. Section 171 of the Karnataka panchayat Raj Act 1993 that section 15 to 24 shall apply mutatis mutandis in respect of election to Zilla panchayat. Section 15 of the Karnataka panchayat Raj Act, 1993, in particular provides that no

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90 2003(6) Kar L.J.347C
91 2000(1) Kar L.J 108
election fill a seat or seats to Gram panchayat shall be called in question except by an election petition on or more grounds specified in sub-sec (1) of section 19 & 20. In these circumstances the impugned order is set aside.

The jurisdiction of the court to decide an election petition & its procedure have been explained under the various sections of the Karnataka panchayat Raj Act, 1993. The powers have been entrusted with the court to try the election petition and to ensure the placement of the right candidate at a proper place. However, some time ambiguity may prevail in the concerned section itself. Then the court has to clear it when a petition filed before it.\(^{93}\) In \textit{H.V.Venkatesh V. Election officer, Tahsildar Mulbagal Taluk, Kolar District and others (1994)}. The High court of Karnataka held that expression, ‘District court’ & ‘District judge’ are interchangeable & in \textit{Laxmappa V Election officer Ranebennur & others (1995)}\(^{94}\) it was held the term ‘Munsiff’ can be equated with ‘Munsiff court’ to file an election petition.

The learned Munsiff being sub-ordinate to the High court & the decision of the Munsiff in the election petition is revisable by High court under section 115 of the code of civil procedure. The court further held that section 17 of the Karnataka panchayat Raj Act, 1993, which deals with the trial of election petition, provides for dismissal of the petition for non-compliance with section 15 of Karnataka panchayat Raj Act 1993.

\textbf{5.6: COMPOSITION OF TALUK & ZILLA PANCHAYATS}

Apart from the elected members for constitution of a Taluk panchayat it shall also consists of the following members. They are;

a) The members of the house of people (lok sabha) & state legislative Assembly representing a part or whole of the Taluk, whose constituency lies within the Taluk.

\(^{93}\) 1994(4) kar L J. 680
\(^{94}\) 1995 (1) Kar L J 289
b) The members of council of states (Rajya sabha) & the state legislative council who are registered as electors within the Taluk; &

c) One-fifth of the Adhyaksha of the Gram panchayats in the Taluk by rotation for a period of one year as the Adhyaksha of Taluk panchayat may determine by lot;

Provided that an Adhyaksha who was a member under this clause for one term shall not be eligible to become a member for a second term during the remainder of his term of office as Adhyaksha.

The above three category members shall be entitled to take part in the proceedings of & vote at the meetings of Taluk panchayat except at a special meeting convened for the purpose of election of Adhyaksha & upadhyaksha.95

For the constitution of Zilla panchayat besides elected members it shall consist of the following members;- 

a) The members of the house of the people (Lok Sabha) & the members of the state legislative Assembly representing a part or whole of the district whose constituencies lie within the district.

b) The members of the council of states (Rajya Sabha) & the members of the state legislative council who are registered as electors within the district; &

b) The Adhyaksha of Taluk panchayats in the district.

These members shall be entitled to take part in the proceedings of, & vote at, the Zilla panchayat meetings except at a special meeting convened for the purpose of election of Adhyaksha & upadhyaksha.96

However, sections 12, 128 & 167 of the Karnataka panchayat Raj Act, 1993, provides for the disqualification for being chosen & for being member of Gram panchayat, Taluk panchayat & Zilla panchayat respectively on various grounds such as holding office of profit, double representative position, conviction for criminal action etc.,

95 Karnataka panchayat Raj Act, 1993, sec 120.
96 Ibid, sec. 159.
When a Gram panchayat member got elected as member of taluk panchayat is required to resign his seat in Gram panchayat with in 15 days from the date of notification of names of members under section 133 of Karnataka panchayat Raj Act, 1993. Whether deputy commissioner can declare his seat in taluk panchayat as vacant if elected member fails to give up his membership of Gram panchayat within the said period? In Venkateshalu V Deputy Commissioner, Bellary & others (1996) 97 It was held that the words "at the expiration of a period of 15 days from the date of notification of the names of members under section 133 apply where the person who is chosen as a member of the Taluk panchayat is already a member of any of the houses or other local authorities specified in sub-section (2) of section 128. On the other hand, the words "within 15 days from the date of commencement of the term of office" apply to any other specified offices to which a person who is already a member of the taluk panchayat is elected or chosen. If such person did not resign from his seat in the Gram panchayat within 15 days & resigned only after expiry of 15 days from the date of notification of names of Taluk panchayat under section 133, the seat held by such person in the Taluk panchayat having thus become vacant on the expiry of 15 days. Under section 128(2) of the Karnataka panchayat Raj Act, 1993 the deputy commissioner is bound to take action under section 129(2) in regard to the person who fails to give notice within 15 days.

Section 128(2) of Karnataka panchayat Raj Act, 1993, imposes the obligation on the part of a person who has been elected to Taluk panchayat being a member of Gram panchayat. There is no prohibition in the Act & wherein a Gram panchayat member could also contest to Taluk panchayat or other bodies. However, the Karnataka panchayat Raj Act, 1993, prohibits the simultaneous membership in two or more bodies. If a member of Gram panchayat is elected to Taluk panchayat then within 15 days of notification of his name, such member shall resign to Gram panchayat membership. Otherwise his membership to taluk

97 1996 (7) Kar. L J. (DB)
panchayat would automatically be held as vacant. Hence, the duty is on such member to act within 15 days & convey his option to the deputy commissioner.

5.7: ELECTION OF ADHYAKSHA & UPADHYAKSHA

The elected members of Gram, Taluk, & Zilla panchayats shall within one month from the date of publication of names of members, after every general election or on reconstitution or establishment under this Act or immediately before the expiry of term of office of Adhyaksha & upadhyaksha choose two members from amongst them to be respectively Adhyaksha & upadhyaksha thereof & so often there is a casual vacancy in the office of Adhyaksha & Upadhyaksha, they shall choose another member from amongst them to be Adhyaksha or upadhyaksha as the case may be. However, the posts shall be reserved in accordance with the various provisions of Act & Rules, in all the three tiers. The reservation of posts of Adhyaksha & Upadhyaksha in all three tiers of panchayat Raj institutions in favour of SC, ST, & WOMEN are constitutional obligations. However, the reservation in favour of backward class citizens has been left to the discretion of legislature of a state. Extending reservation to SC/ST/women in the governance of panchayat Raj institutions have been recommended by various committees constituted both at the centre & state level. But, the constitutional status & obligation was achieved only through 73rd constitutional amendment Act, 1992. This promotes the objectives enshrined in the preamble of the constitution of India.

It is obvious that the reservation of seats as specified in Article 243-D of constitution of India & various provisions under Karnataka panchayat Raj Act, 1993, is intended to guarantee a minimum number of seats to SC, ST, & WOMEN &

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98 Karnataka panchayat Raj Act, 1993, sections 44, 138 & 177
99 Constitution of India Article 243-D(4)
100 Ibid, 243-D(6)
101 Preamble; we the people of India having solemnly resolved to constitute India into a SOVEREIGN, SOCIAL, SECULAR, DEMOCRATIC, REPUBLIC & to secure to all its citizens JUSTICE; social, economic & political.
BACKWARD CLASS citizen. Therefore, if a member of the said caste, tribes & women etc, secure additional seat by election to general unreserved seats there would be no repugnancy. The claim of eligibility for the reserved seat does not exclude the claim for the general seat. Both the claims have to be decided on the basis that there is one election from the double member constituency. The seats shall be reserved to the office of Adhyaksha & upadhyaksha in the prescribed manner in favour of SC, ST, WOMEN & BACKWARD CLASS citizen as prescribed in the Act 1993 & various rules & orders & notifications issued by the state Government from time to time.

The election of Adhyaksha & upadhyaksha for Gram panchayat shall be held in the first meeting after constitution or reconstitution of Gram panchayat within one month from the date of publication of list of elected members. In the case of Taluk panchayat & in the case of Zilla panchayat the Deputy commissioner in the first meeting after constitution or reconstitution may fix the date for election of Adhyaksha & upadhyaksha & send to every member, notice of date so fixed not less than seven days prior to the date of meeting. Not less than two hours before the time fixed for the election of Adhyaksha & upadhyaksha any member may nominate any other member for being elected as Adhyaksha or upadhyaksha as the case may be, by delivering to the concerned officer appointed for that purpose. In H.M.Nagraju V state of Karnataka (1998) nomination

102 V.V.Giri V. D.Suri Dora. AIR 1959, SC1318
103 Karnataka panchayat Raj Act, 1993, sections 44(20, 138(2)(3)(4) & 177(2)(3) & (4)
107 (1998)(4) kar L.J 272
paper to contest for the office of Adhyaksha was presented just 45 minutes before the time fixed for such meeting was accepted. It was held that, as per Rule 5 of Karnataka panchayat Raj (Election of Adhyaksha & upadhyaksha of Gram panchayat) Rule 1995, the nomination to the office of Adhyaksha is to be filed 2 hours before the time fixed for the meeting called for the purpose of holding election. Admittedly the time fixed for the election (or meeting) was 1 PM. The nomination was filed at 12.15 PM. Thus it was beyond the time as provided under Rule. Therefore, the acceptance of nomination paper was improper. This can be considered as trend setting decision in order to be a model to all those who wish to contest for a responsible office under panchayat Raj institutions.

In M.G Achappa V The prescribed officer to hold the Election of Adhyaksha & upadhyaksha of Gonikoppal Gram panchayat, Virajpet, kodagu, Madikeri district & others (1996)\textsuperscript{108} The moot question was whether the deputy commissioner has authority to issue fresh notification cancelling the defective notification purported to have been issued in violation of the provisions of the Act 1993?. In this case, as per the notification issued by the Government, the office of the Adhyaksha was reserved to backward class without further classifying ‘A’ & ‘B’. The deputy commissioner cancelling this notification has issued the fresh notification where the office of Adhyaksha was reserved to backward class ‘A’. The authority of deputy commissioner canceling the defective notification & issue of revised notification was challenged on the ground that it is done without jurisdiction. The court held that the action of deputy commissioner is referable to statutory powers & can not be termed as to without jurisdiction.

In a situation where a person who had been elected to the post of Adhyaksha, loses the post by the members passing a resolution expressing lack of confidence in such a person, the Act 1993 does not provide for disqualification for the person to contest the post, yet again whether it is in the case of a post reserved for a scheduled caste, scheduled tribe, or backward class category or women in

\textsuperscript{108} 1996(5) Kar L.J 555 (DB)
general. The provision is the same. Reservation provided under section 44 is in favour of a category & for the term of a particular post. The reservation is also sought to be rotated amongst the available panchayats in the state & term wise in different panchayats in the state. Therefore, if the reservation as provided for under section 44 is to be implemented in its true spirit, the reservation should be for particular category for the term of the posts for which the original reservation is notified & not taking steps for re-notification because the person who had elected loses the post either immediately thereafter or after some time of holding the post.\textsuperscript{109} Reservation made to protect certain persons must further provide that the no confidence motion could be moved only in certain circumstances such as disability arising on account of serious misconduct of the incumbent in office. Otherwise as provision stand, the enactment leads to piquant situations such as in \textbf{Bapu dada patil case,}\textsuperscript{110} as if a person in whom no confidence is expressed & is elected again to such office & such person is not in a position to command majority in the panchayat, there will be dead-lock & stale mate in the panchayat. The legislature will have to bestow its attention to this aspect & suitably provide for such contingencies.

The office of Adhyaksha of the Gram panchayat cannot be kept vacant on the ground that no candidate belonging to scheduled tribe is available. This is contrary to the object of the local self-government as provided under the provisions of the Act, 1993\textsuperscript{111}.

Even when the election to the office of Adhyaksha & upadhyaksha could not be conducted for one or the other reason, the deputy commissioner can exercise his power. In \textbf{H.N.Sreenivas Babu V state of Karnataka & others (1996)\textsuperscript{112}} the deputy commissioner has appointed an officer under section 47 of

\begin{itemize}
  \item \textsuperscript{109} H.R.Shiva Kumar & others V state of Karnataka & others (2004(7) kar. L.J. 572. Bapu Dada patil V state of Karnataka 1996(7) kar. L.J. 2159(DB)
  \item \textsuperscript{110} 1996(7) kar, L.J. 2159DB)
  \item \textsuperscript{111} Smt Soubhagya V The Returning officer Horalvadi Gram panchayat, Nanjanagudu Tq2001 (50 kar, L.J. 216 C
  \item \textsuperscript{112} 1996(3) kar, L.J 31 (DB)
\end{itemize}
the Karnataka panchayat Raj Act, 1993 owing to the above circumstances. By an order made which is impugned herein the deputy commissioner called upon the concerned panchayat to elect Adhyaksha & upadhyaksha. It was contended that the deputy commissioner having appointed administrator the members of panchayat ceased to be members’ thereof & consequently when panchayat is ceased to exist the only course is to hold fresh elections to the panchayat. The court held that deputy commissioner could exercise his powers to appoint an officer to perform the duties of Adhyaksha until the Adhyaksha is duly elected. In generic sense, the expression ‘vacancy in an office’ would mean absence of incumbent in an office. If there is no election to the post of Adhyaksha or upadhyaksha, there is a vacancy as such. In such an event, it is certainly open to deputy commissioner to exercise his powers under section 47 of the Karnataka panchayat Raj Act, 1993. The court held that the order made by the deputy commissioner under section 47 of the Karnataka panchayat Raj Act, 1993, is permissible for him to issue an order for fresh election to the office of Adhyaksha & upadhyaksha.

After filing of nomination for the office of Adhyaksha & upadhyaksha the concerned officer shall scrutinize all nomination papers delivered to him & shall read out the members present at such meeting the names of the members who in his opinion have been duly nominated together. The officer shall also verify the eligibility of the candidates who is contesting for the office of Adhyaksha or upadhyaksha, especially category or class eligibility.

What is the duty of the prescribed officer when a majority member of a Gram panchayat opposed to elect a lone candidate belonging to scheduled tribe? In katagihalli Anadappa V state of Karnataka (1995) the office of Adhyaksha of Gram panchayat was reserved for a person belonged to scheduled tribe. There was only one nomination. This was opposed by a majority of members. The

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113 1995(2)kar L.J.512(DB)
prescribed officer refused to declare election & declared election proceedings as “cancelled” & referred the matter to Government. The court held that the prescribed officer is responsible for holding the election & declare the result, whether a person has been elected to the office of Adhyaksha or not. He has no jurisdiction to refer the matter to Government.

The reservation of the office of Adhyaksha or upadhyaksha shall be made applicable to the candidate belonging to scheduled caste or scheduled tribe even though the candidate is elected from general constituency.114

Section 44 which provides for election of Adhyaksha & Upadhyaksha also contemplates that certain posts of Adhyaksha & Upadhyaksha in the state shall be reserved for Scheduled caste & scheduled tribe & for other backward classes. The deputy commissioner issued notification indicating the office of Adhyaksha of Bookinakere Gram panchayat of Mandya district is reserved for backward classes & Upadhyaksha for general- women. The petitioner was elected from the general constituency but contested the office of the Adhyaksha claiming to be the person belonging to backward class on the strength of the certificate issued by the Tahsildar & won the election. The argument that the petitioner having been elected from general constituency could not have contested for the office of Adhyaksha reserved for backward classes, does not survive for consideration...The scheme of the Act 1993 do not require a person contesting against a general constituency to declare as to his caste or the category to which he belonged. General constituency is opened to all. The form itself indicates that no such declaration is necessary from a person contesting against General constituency, the form is for all categories & it directs to score out that portion which is not applicable. Further, a plain reading of section11 of the Act, 1993, also makes it clear that any person whose name is in the list of voters & who does not

114 C Ramappa V. B. Bole gouda & others 1998(6) kar L.J. 576 A
suffer any other disqualification enumerated in section 12 of the Act can contest against general constituency.115

For the constitution of Gram panchayat seats shall be reserved in favour of SC, ST, WOMEN, & Backward class citizen (i.e., category ‘A’ & ‘B’). Section 5(2) of Karnataka panchayat Raj Act, 1993 provides that if no person belonging to SC is available the seats reserved for that category shall also be filled by the person belonging to ST & vice-versa. Further, under section 5(3) in respect of reservation of seats in favour of category ‘A’ or ‘B’ the above principle has been made applicable (i.e., interchangeability). However, the interchangeability of seats, which is available under section 5 in favour of SC & ST, is not applicable to fill the office of Adhyaksha or upadhyaksha in the absence of clear provision in the Act.

When the office of Adhyaksha is reserved for scheduled caste, whether it should be filled up only from among SC male members elected from constituencies reserved for SC & whether women elected from constituency reserved for SC women is not eligible to be elected in view of separate reservation made for women under category of SC, BC category ‘A’ & of unreserved has been an issue in M.Hemala Nayak & others V Smt Raniyamma & others (1998)116. The Government in view of section 177 of the Karnataka panchayat Raj Act, 1993, & Rule 3 of the Karnataka panchayat Raj (Reservation of offices of Adhyaksha & upadhyaksha of Zilla panchayat) Rule 1995, issued a notification stating that the Adhyaksha post of shivamogga Zilla panchayat is reserved for scheduled caste & upadhyaksha post is reserved for unreserved women. A meeting (election) was convened. The respondent filed her nomination & it was accepted & she was declared elected to the office of Adhyaksha. The election of the respondent was challenged on the ground that she is ineligible to hold the post. It

115 Rule 13 & 14 of the Karnataka panchayat Raj (conduct of election) Rules 1993 do not require the candidate contesting against general constituency to declare his caste or category to which he belongs.
116 1998(2) kar L.J.406
was contended that the person who has been elected from the constituency reserved for SC women has no right or eligibility to contest for the office reserved for SC. The court held that section 177(2)(c) of the Karnataka panchayat Raj Act, 1993 & The Rules specifically provide for reservation for office of Adhyaksha & upadhyaksha for women in respect of each of the categories. Hence, there is no substance in the contention of the respondent that the Act 1993 & Rules do not provide for reservation for women in each of the categories. In view of the law, women elected from the constituency reserved for SC women, is not eligible to contest to the post reserved for SC. Therefore, the acceptance of the nomination of such person to the office of Adhyaksha & declaring her election as Adhyaksha of Zilla panchayat is illegal.

There is no provision in statute laying down rule that if no person belonging to scheduled Tribe is available to fill office which is reserved for such person; office has to be filled by person belonging to scheduled caste or vice-versa. The court can not in exercise of its power under Article 226 of the constitution of India cannot take up the role of legislature & interpret the provisions by incorporating the provisions which are not incorporated in the Act 1993. Thus the claim made by person belonging to scheduled caste that she be permitted to contest election to office of Adhyaksha which is reserved for person belonging to scheduled Tribe, is to be held untenable in the absence of statutory provision permitting same.¹¹⁷

After the scrutiny of nomination the concerned officer appointed shall give the permission for withdrawal of nomination in writing. After the time fixed for withdrawal is over, if there is only one candidate who has been validly nominated, & has not withdrawn his candidature in the manner & within the time specified, the prescribed officer shall forthwith declare such candidate to be duly elected as Adhyaksha, or upadhyaksha as the case may be. If the number of candidates who

¹¹⁷ Supra, Smt Soubhagya V The Returning officer Horalvadi Gram panchayat, Nanjanagudu (Tq) 2001 (50 kar, L.J. 216
have been validly nominated & who have not withdrawn their candidature is more than one then the prescribed officer shall proceed to conduct the election. Election shall be conducted as prescribed in the Rules. After voting by all the members present & wishing to vote, the prescribed officer shall declare the candidate to whom the highest numbers of valid votes have been given to have been duly elected. When an equality of votes is found to exist between any two or more candidates then it shall be decided by lot, & on whom the lot falls had received an additional vote. He shall thereafter declare the candidate on whom the lot falls to have been duly elected. The prescribed officer shall cause a record of the minutes of the meeting. The member elected as Adhyaksha or upadhyaksha, as the case may be shall enter upon his duties immediately after the declaration of result of the election.

When a vacancy occurs in the office of Adhyaksha or upadhyaksha the secretary in case of Gram panchayat to executive officer, The executive officer in case of Taluk panchayat to Assistant commissioner & chief executive officer to the deputy commissioner in the case of Zilla panchayat shall give notice of such vacancy, within seven days from the date of occurrence, who shall thereupon take action in the manner provided for conducting the election of Adhyaksha or upadhyaksha as the case may be. The provision for the election of Adhyaksha or upadhyaksha shall, *mutatis mutandis*, is applicable for the purpose of filing up of casual vacancies of Adhyaksha & upadhyaksha.

Any member within 15 days from the date of declaration of result may challenge the validity of election of Adhyaksha or upadhyaksha as the case may be, by filing an election petition before the civil judge (junior division) / Munsif in case of Gram panchayat with Rs 250/- as security cost, in case of Taluk panchayat before the civil judge with a deposit of Rs 1000/- as security for costs & in case of Zilla panchayat before the district Judge with a deposit of Rs 2000/- as security for

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*Karnataka panchayat Raj (conduct f Election) Rules 1993, Rule 83*
cost. The petitioner shall sign every election petition apart from the regular procedure, & it shall contain a concise statement of materials on which the petitioner relies. It shall also be verified in the manner laid down in the code of civil procedure, 1908 for the verification of pleading. Further, the petitioner may claim any of the following:

a) That the election of the returned candidate is void;

b) That the election of the returned candidate is void & that he himself or any other candidate has been duly elected;

The civil judge (junior division), or civil judge, or as the case may be, may after such enquiry as he deems fit & after giving an opportunity to be heard to the parties to the proceedings make an order:

i) Dismissing the petition; or

ii) Declaring the election of returned candidate to be void; or

iii) Declaring the election of the returned candidate to be void & the petitioner or any other candidate to have been duly elected.

If the civil judge (junior division) or civil judge or district judge as the case may be, is of the opinion that the result of the election has been materially affected by the improper reception or refusal of a vote or by any non-compliance with the provision of the Act or any of the Rules, the concerned judge shall declare the election of the returned candidate to be void.

If any person who has presented an election petition has in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected & the judge is of the opinion that in fact the petitioner or such other candidate received a majority of the valid votes, the concerned judge shall after declaring the election of returned candidate to be void, declare the petitioner or such other candidate as the case may be, to have been duly elected.
The court held that, an election petition could be filed under section 15 of the Karnataka panchayat Raj Act, 1993, within the period prescribed & subject to the conditions set forth therein. Further, such an election petition will have to comply with section 15 of the Act, 1993, as well. If the conditions are not complied with the election petition is liable to be dismissed under section 17 of the Act 1993 without notice to the other side. Any candidate who is not a party to the proceedings can become a party to the proceedings as provided under section 17(3) of Karnataka panchayat Raj Act, 1993, if he complies with the conditions thereto, provisions regarding candidate being impleaded are also provided thereto. The court further held that, a person who could have filed an election petition himself, if he has not filed such a petition within a period of limitation & subject to the conditions prescribed under section 15, cannot by indirect method transpose himself as petitioner.

To challenge the result of election the petitioner shall approach the court only by an election petition with security for cost as prescribed under the Act, & Rules .If the petitioner did not establish his claim that he himself or any other person shall be declared as returned candidate then the court can not do so. Hence, the procedure to file an election petition to declare the election of returned candidate to be void & their claim should be properly stated in the petition. Further, the election petition should be filed within a limitation period.

After establishment of Gram panchayat, Taluk panchayat & Zilla panchayat, every panchayat shall be a body corporate in the name of particular panchayat & shall have perpetual succession etc., according to section 6, 119(2) & 158(2) of Karnataka panchayat Raj Act, 1993. The term of office of every Adhyaksha & Upadhyaksha of the Gram panchayat shall, cease on the expiry of

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119 1995 (4), kar. L.J. 510 A
his term of office as a member of Gram panchayat, unless he resigned or removed from the post for various reasons under section 48 of the Act, 1993. The term of every Adhyaksha & Upadhyaksha of Taluk panchayat & Zilla panchayat shall be twenty months from the date of his election or till he ceases to be a member of Taluk or Zilla panchayat which ever is earlier, & until he resigns or removed from the office of Adhyaksha & Upadhyaksha under section 140 & 179 of the Act, 1993 respectively. As amended by Karnataka Act 17 of 1996 provisions fixing term of persons elected as Adhyaksha or Upadhyaksha to hold office for a specified period of 20 months from the date of election, it was held in B. Javaraya Gouda V state of Karnataka & others (2000) Amendment is intended to give effect to constitutional obligation of providing opportunity to hold such elected offices to members of three types reserved categories, viz Scheduled caste, Scheduled Tribes, & other backward classes, by means of rotation during term of five years of panchayat institution, as fixed under constitution. In absence of any term constitutionally fixed for person to hold office to which he/she is elected, state legislature is competent to fix same, by virtue under amendment is not co-terminus with term of panchayat institution it can not be concluded that continuity, certainty & strength of institutions have been undermined. Thus amendment is within the competence of state legislature.

Every Adhyaksha & Upadhyaksha of all the three tiers may resign his office by writing under his hand by addressing to the following persons:

i) Adhyaksha of Gram panchayat to Assistant commissioner & upadhyaksha to Adhyaksha of Gram panchayat & in his absence to Assistant commissioner

ii) Adhyaksha of Taluk panchayat to the deputy commissioner & Upadhyaksha to the Adhyaksha of Taluk panchayat & in his absence to deputy commissioner.

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120 Karnataka panchayat Raj Act, 1993. Section, 46.
121 Ibid, sec 43.
122 2000(7)kar.L.J.14(DB)
123 K.P.R.Act 1993, sec, 48
124 Ibid, sec 140
iii) Adhyaksha of Zilla panchayat to Government & the Upadhyaksha to Adhyaksha of Zilla panchayat & in his absence to Government.\textsuperscript{125}

The resignation of Adhyaksha & Upadhyaksha of Gram panchayat, Taluk panchayat & Zilla panchayat shall take effect only after the expiry of 10 days in case of Adhyaksha & Upadhyaksha of Gram panchayat & after 15 days in case of Adhyaksha & Upadhyaksha of Taluk & Zilla panchayat. However, within the said period it can be withdrawn.\textsuperscript{126}

Every Adhyaksha or Upadhyaksha of the Gram panchayat, Taluk panchayat & Zilla panchayat shall vacate his office if he ceases to be a member of Gram panchayat, Taluk panchayat & Zilla panchayat respectively.\textsuperscript{127} Every Adhyaksha & Upadhyaksha of Gram panchayat or Taluk panchayat or Zilla panchayat shall after an opportunity is offered for hearing him, & if necessary after obtaining report from Taluk panchayat in case of Adhyaksha & Upadhyaksha of Gram panchayat & from Zilla panchayat in case of Adhyaksha & Upadhyaksha of Taluk panchayat & considering the same be removable from his office as Adhyaksha or upadhyaksha by the Government for being persistently remiss\textsuperscript{128} in the discharge of his duties, & Adhyaksha or Upadhyaksha so removed who does not cease to be member shall not be eligible for re-election as Adhyaksha or Upadhyaksha during the remaining term of office as member to Gram, or Taluk panchayat or Zilla panchayat as the case may be. An Adhyaksha or Upadhyaksha removed from his office as said above may be removed by the Government from membership of Gram panchayat or Taluk panchayat, or Zilla panchayat as the case may be.\textsuperscript{129}

5.8: MOTION OF NO-CONFIDENCE

One of the chief characteristics of a parliamentary form of government is that the executive is responsible to the legislature or House of the people. This is

\textsuperscript{125} K.P.R.Act 1993, sec 179.
\textsuperscript{126} K.P.R.Act, 1993, sections 48(3), 140(1) & 179(1)
\textsuperscript{127} Ibid, sections 48(2) 140(2) & 179(2)
\textsuperscript{128} Smt T.Bhagya lakshmi V state of Karnataka & another 1998(1) kar, L.J.731 A
\textsuperscript{129} Karnataka panchayat Raj Act, 1993, secs 48(5) 140(5) & 179(5)
applicable to lok sabha, vidhana sabha & local self Governments also. The prime minister at the national level, the chief minister at the state level & the Adhyaksha or Upadhyaksha of local self Government is expected to administer with the support of the majority of members on the floor of the House. He has to take the confidence of all the members & bridge the gap existed among the members to get maximum number of good works which bring good name & reputation not only to him but also to his party.

Moving a motion of no-confidence is a right given to the members, who constitute Electoral College to elect the president & vice-president to the panchayat. Under section 49 of the Karnataka panchayat Raj Act, 1993, every Adhyaksha or upadhyaksha of Gram panchayat shall forthwith be deemed to have vacated his/her office if a resolution expressing want of confidence in him/her is passed by a majority of members of Gram panchayat at a meeting specially convened for the purpose in accordance with the procedure as may be prescribed. But no such resolution shall be moved unless notice of the resolution is signed by not less than one-third of the total number of members & at least ten days notice has been given to the intention to move the resolution.

In Amarappa V Assistant commissioner, Koppal (2007) The High court of Karnataka held that the petitioner cannot enforce the alleged bond stated to have been executed by the members of Gram panchayat assuring that they will not move any no-confidence motion against the petitioner. This is against the spirit of the democratic process & the statutory rights conferred as agreement estops members from exercising their democratic rights & is opposed to public policy & law & same is void & is unenforceable.

However, no resolution expressing want of confidence against an Adhyaksha or Upadhyaksha shall be moved within one year from the date of his

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130 S.R.Bommai V. U.O.I AIR 1994 SC 1918
131 2007(1) Kar, L.J.671

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election. Where a resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered & negative by a Gram panchayat a similar resolution in respect of the same Adhyaksha or Upadhyaksha shall not be given notice of, or moved within one year from the date of decision of the Gram panchayat. Section 49 of the panchayat Raj Act, 1993 has been supplemented by the Karnataka panchayat Raj (Motion of no-confidence against Adhyaksha & Upadhyaksha of Gram panchayat) Rules 1994. Under Rule 3(1) a written notice of intention to make the motion under the proviso to section 49 shall be in a prescribed form signed by not less than one-third of the total number of members together with a copy of the proposed motion shall be delivered in person by any two of the members signing the notice to the assistant commissioner.

The Assistant commissioner shall thereafter convene a meeting for the consideration of the said motion at the office of the Gram panchayat on the date appointed by him which shall not be later than 30 days from the date on which the notice under sub-rule (1) was delivered to him. He shall give to members a notice of not less than 15 clear days of such meeting in a prescribed form. Where the holding of such meeting is stayed by an order of court, The Assistant commissioner shall adjourn the said meeting & shall hold the adjourned meeting on a date not later than thirty days from the date on which he receives the intimation about the vacation of stay, after giving to the members, a notice of not less than 15 days of such adjourned meeting.

A notice in a prescribed form shall be given to every member including the Adhyaksha & upadhyaksha. The quorum of such meeting shall be two-thirds of the total number of the Gram panchayat. The Assistant commissioner shall preside at such meeting. For determination of two-third of total number of members under this sub-rule any fraction arrived at shall be construed as one. A meeting convened for the purpose of considering a motion under sub-rule (2) shall not for any reason be adjourned. If there is no quorum within one hour after the time appointed for
the meeting the meeting shall stand dissolved & the notice given under sub-rule (1) shall lapse. As soon as the meeting convened under sub rule (2) commences the Assistant commissioner shall read to the members of Gram panchayat, the motion for the consideration of which the meeting has been convened & shall put it to vote without any debate. The Assistant commissioner shall not speak on merits of motion & he shall not be entitled to vote thereon. If the motion is carried by a majority of not less than two-thirds of total number of members of the Gram panchayat sitting & voting The Adhyaksha or Upadhyaksha as the case may be, shall forthwith cease to function as such & the Assistant commissioner shall as soon as may be notify such cessation on the notice board of office of Gram panchayat & also inform the Adhyaksha or Upadhyaksha, as the case may be, regarding such cessation, if he is not present at the meeting. After the cessation is notified under sub-rule (9) the Adhyaksha or Upadhyaksha as the case may be, shall immediately handover all documents, moneys or other properties of Gram panchayat in his custody to the secretary of the Gram panchayat. The election to the office of Adhyaksha or Upadhyaksha shall not be held until the notification under sub-rule (9) removing the Adhyaksha or Upadhyaksha as the case may be, is published.

Under section 140(3) & 179(3) of Karnataka panchayat Raj Act, 1993 every Adhyaksha & Upadhyaksha of Taluk panchayat & Zilla panchayat respectively shall be deemed to have vacated his/her office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Taluk panchayat & Zilla panchayat at meeting specially convened for the purpose.

For passing a resolution expressing want of confidence in Adhyaksha & Upadhyaksha of a Gram panchayat section 49 of the Karnataka panchayat Raj Act, 1993 shall be read with rules as a complete code in themselves deliberately provided by the legislature having regard to the elective office of Adhyaksha &
Upadhyaksha. Therefore, it cannot be said sub-rule (2) of Rule 3 for issue of notice by the Assistant commissioner merely directory. Further rule requiring the Assistant commissioner to convene special meeting before expiry of 30 days from the date on which notice of such motion has been delivered to him is mandatory. Non-compliance with the rule would render motion invalid even if it were passed with requisite majority.\textsuperscript{132}

From the reading of rule 3(1) & (2) of Karnataka panchayat Raj (motion of no-confidence against Adhyaksha & upadhyaksha of Gram panchayat) Rule, 1994, with the proviso of section 49 of the Act, 1993, it is clear that persons who intend to move the no-confidence motion shall give at least ten days notice to Assistant commissioner. This 10 days notice to Assistant commissioner will not come in the way of Assistant commissioner to call for the meeting to consider the motion of no-confidence before the expiry of 10 days from the date he/she received the notice.

In Smt Hemavathi laxmangowda V. state of Karnataka & others (2002)\textsuperscript{133} When the meeting for consideration of the no-confidence Motion was convened, Adhyaksha-appellant submitted the letter of resignation & since the resignation was submitted, the no-confidence was not taken up for consideration. The resignation was to take effect prospectively i.e., after ten days & the appellant thereafter withdraw the resignation. When a no-confidence motion had been tabled & when the meeting had been convened for consideration of the no-confidence motion, the appellant who was the Adhyaksha was equally obliged to have faced that motion & was well-within her rights to have established that the body still had confidence in her or that she enjoyed the majority support etc. Whereas, in this case, virtually in order to sabotage the meeting the appellant submitted the resignation & there can be no two opinions about the fact that the letter of resignation was only for the purposes of ensuring that the no-confidence

\textsuperscript{132} M. Muniya & others V state of Karnataka & others.1997(7) kar L.J 272B : ILR 1997 KAR 677
\textsuperscript{133} 2002(1) kar, L.J.340A.
motion was not taken up. After the meeting was dropped, the appellant withdrew the resignation. The submission of resignation & the immediate withdrawal thereafter was far from honesty... It was appellant who virtually sabotaged the holding of meeting. No meeting had commenced & consequently, there can be no question of adjournment having taken place. What in fact happened is that no meeting was at all necessary for the simple reason that the objective of no-confidence motion was in order to remove the appellant from office & had the motion succeeded, the appellant would have had to vacate office. The appellant on the other hand submitted a letter of resignation which is tantamount to vacating office & consequently, the respondent was fully justified in having totally dropped the meeting. An adjournment of a meeting presupposes the fact that the business is incomplete or for any other valid reason if the meeting is stopped & it is decided to continue with it at some future point of time. Thus, in the context of peculiar facts & circumstances of the case, it is impossible to hold that the motion had either been defeated or that it has been lapsed & consequently, the right course opens for the respondent was to reconvene the meeting within the prescribed period of time which has been done. In view of the circumstances under which the resignation was tendered & withdrawn this is not a case in which the appellant can be permitted to take advantage of her own wrong.\textsuperscript{134}

However, when some of the elected members right to vote in the proceedings of meetings has been taken away by order of election commissioner & when motion passed by majority of total number of elected members excluding those elected members who have no right to vote, whether such a motion is to be held as validly passed against Adhyaksha? In \textit{p. Mahadev prabhu V the state of Karnataka & others (1998)}\textsuperscript{135} total elected members were 26; where 13 members had expressed no-confidence as against the petitioner. But according to the petitioner 13 did not represent the majority from among the total number of

\textsuperscript{134} Ibid, Justices Saldana & Chinnappa
\textsuperscript{135} AIR, 1998 kar 2929.
members of Taluk panchayat. Four members of Taluk panchayat were disqualified by the election commissioner on the ground that they have violated whip issued. The petitioner before the court challenged the said order. The court dismissed the said writ petition confirming the orders of disqualification & he preferred writ appeal before division Bench. The division bench pending hearing of writ appeals passed an interim order, which shows the persons who are disqualified though ordered to be continued as members have no right to vote in the proceedings of meeting. If that is so, the said four persons shall not be taken into account for the purpose of calculating the total number of elected persons. Therefore, the total elected members were only 22 excluding the persons whose right to vote had been suspended. From the proceedings it was seen 13 members in favour of the resolution. That represented that majority taking in to account only 22 were elected members of taluk panchayat. There fore there was no illegality in the resolution passed against petitioner & consequently declaring that he had vacated the office.

When an Adhyaksha of a Gram panchayat is removed by motion of no-confidence, is there any bar against the same person to contest again for the same post if he is the only candidate to the office of Adhyaksha. Since, the office of Adhyaksha reserved to a lone women belonging to ST. The court held that there is no bar to such person to contest for the same post after she had been removed by a motion of no-confidence since it is the duty of legislature to make law in the area said above.136

Section179(3) of the Act 1993 says every Adhyaksha or Upadhyaksha of Zilla panchayat shall be deemed to have vacated his/her office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Zilla panchayat at a meeting specially

136 Babu D. Patil V state of Karnataka.1996(7) kar.L.J 215 A
convened for the meeting. In Laxmappa V. state of Karnataka & others (1999) the issue was whether the ex-officio (non-elected members) members can give requisition to convene a special meeting to move motion of no-confidence. In this case there were 46 members in Zilla panchayat. Of these 27 are elected members & 19 ex-officio members, viz MPs, MLAs, MLCs, & Adhyakshas of Taluk panchayats who were ex-officio members. A requisition made by 10 members convening special meeting to move motion of ‘No confidence’ against Adhyaksha, which also include some non-elected members. The Adhyaksha failed to convene special meeting. Then chief executive officer was asked to arrange such meeting. In this respect whether expression ‘total number of members’ used in section 180(2) shall be read to mean only ‘total number of elected members’ excluding thereby non-elected members who are ex-officio members.

It was held that the ex-officio members though barred from participating in special meeting & voting on motion of no-confidence therein, are not barred from joining with elected members for the purpose of making request for convening special meeting. The fact that right to vote on motion of no-confidence against Adhyaksha is exclusive to elected members & that elected members alone can remove Adhyaksha by passing with majority of total number of elected members no confidence against him (Adhyaksha) does not justify assumption that elected members alone can request for convening of special meeting, when statute, plainly provides for otherwise. But, where the total membership of Zilla panchayat is 46 consisting of 27 elected members & 19 ex-officio members, requisition made only by 10 members for convening special meeting is incompetent, as the strength of requisitions is less than 1/3 of “total number of members”. It was further held that, if the “total number of members” is confined only to elected members then it would be rewriting the provision & it is not the province of court.

137 Shantha bai B. Bohi V The chief executive officer, Gulbarga District & others, 2005(2) kar.L.J.264
138 AIR 1999 KAR 246; 1999(3) KAR, L.J 225 A
139 Karnataka panchayat Raj Act, 1993, section 180(2)(a)
Under section 159(2) of the Karnataka panchayat Raj Act, 1993, all the non-elected members of Zilla panchayat shall be entitled to take part in the proceedings of & vote at, the meeting of Zilla panchayat, except at a special meeting convened for the purpose of election of Adhyaksha & upadhyaksha under sub-section (1) of section 177 or considering a no-confidence motion under section 179(3). It is implied from the above sections that if the non-elected members of Zilla panchayat make a request to convene special meeting to move a motion of no-confidence, it does not violate the Act.

On a bare reading of section 140(3) & other provisions it can safely be held that once there is no requirement under the law for the nominated members to take part in the proceedings or at the time of voting on no-confidence motion, issue of notice under either of the requisition or of the no-confidence motion does not arise at all. When state legislature has specifically provides that “majority of the total number of elected members” it can not be interpreted in any manner so as to enlarge the scope to include all the members like nominated members who have been specifically excluded. The proviso to section 140(3) was introduced by Act no 29 of 1997, the said proviso reads as follows:

Provided that no resolution expressing want of confidence in Adhyaksha or Upadhyaksha shall be moved within six months from the date of his election: provided further that where resolution expressing want of confidence in any Adhyaksha or Upadhyaksha has been considered & negative by the Taluk panchayat, similar resolution in respect of Adhyaksha or Upadhyaksha shall not be placed for consideration within six months from the date of the earlier resolution.

Under section 13(1) (c) of Karnataka panchayat Raj Act, 1993, if a member of Gram panchayat absents himself for more than three consecutive ordinary meetings of the Gram panchayat without leave of Gram panchayat or is absent from the panchayat area for more than four consecutive months, whether his seat

140 M.V.Shantha kumari & another V Jagalur Taluk panchayat & others AIR 2001 Kar 345
shall automatically deemed to be or to have become, as the case may be, vacant without the determination of Assistant commissioner regarding disqualification? In Gundappa poojary V Assistant commissioner Puttur sub-division, Dakshina Kannada district (1997) a resolution passed by Gram panchayat removing the petitioner from the office of Adhyaksha on no-confidence motion was challenged on the ground that two of the members of panchayat had ceased to be members on account of their having remained absent in more than three consecutive ordinary meetings of Gram panchayat without leave of said panchayat & also on account of their remaining absent from the panchayat area for more than four consecutive months.

Having absent above said manner the learned counsel for the petitioner argued that these two members had lost their membership of the panchayat & could not therefore, have participated in the no-confidence motion proceedings. Had the Assistant commissioner disqualified these two members on the above ground automatically the no-confidence motion would have been defeated of want of majority. But according to section 13(2) of the Act, 1993 if any question arises as to whether a person is, or has become subject to disqualification under subsection (1), the Assistant commissioner may either suo-moto or on a report made to him in that regard decided the same. The court held that here, no determination of Assistant commissioner regarding disqualification has been done & the petitioner has not claimed to raise the issue before the Assistant commissioner regarding the disqualification. In the absence of any determination as aforesaid, it is difficult to hold that these two members had lost their membership, so as to disentitle them to participate in the no-confidence motion proceedings. There is nothing on record as at present to suggest that the petitioner has taken up the matter with the Assistant commissioner with the same seriousness as is shown in the present proceedings. Further, if application seeking disqualification of


141 1997(2) kar L.J.497, Smt Aruna Reddy V state of karnatak & others,2002(3) kar, L.J. 509a
members is made to Assistant commissioner it is for the applicant to pursue his application. In the absence of such application, the writ petition is not maintainable.

5.9: MEETINGS OF PANCHAYAT

Provisions for conducting meetings of Gram panchayat, Taluk panchayats & Zilla panchayats in the state have been facilitated under section 52, 141 & 180 of the Karnataka panchayat Act, 1993, respectively. A meeting means the act of coming together, an Assembly or conference of persons for a specific purpose. It can also be defined as the body of persons present at an assembly or conference. The meetings are for the transaction of business. The Karnataka panchayat Raj Act, 1993, provides for the conducting the meeting once in two months regularly without fail, for all the three tiers. Special meetings may also be conducted as prescribed in the Act. However, there is no meeting on the basis of season like winter, monsoon sessions etc, as it prevailing in the legislative procedures of parliament & state legislatures. The procedure to conduct meetings of all the three tiers has been provided by the Karnataka panchayat Raj Act, & various other Rules.\footnote{Karnataka panchayat Raj Act, 1993, section 52.}

The quorum for a meeting of the Gram panchayat shall be one-third of the total number of members. If the quorum is not present the meeting shall be adjourned for future day.\footnote{Ibid, section 53(1)} Provided that if any meeting called for the purpose of election of Adhyaksha or Upadhyaksha is adjourned to the following day or to a future day for want of quorum, it shall not be necessary to have a quorum for such adjourned meeting. The Adhyaksha or in the absence of the Upadhyaksha shall preside, & in the absence of both members present shall choose one from amongst themselves to preside for the occasion.\footnote{Ibid, sec 53(2)}

\footnote{Karnataka panchayat Raj Act, 1993, section 52.}
\footnote{Ibid, section 53(1)}
\footnote{Ibid, sec 53(2)}

204
All questions shall unless otherwise specifically provided, be decided by majority of votes of the members present & voting. No member of a Gram panchayat shall vote on, or take part in the discussion of, any question coming up for the consideration at a meeting of a Gram panchayat, if the question is one in which, apart from its general application to the public, he has any pecuniary interest, & if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration. If the person presiding is believed by any member present at the meeting to have any such pecuniary interest in any matter under discussion, & if a motion to that effect be carried, he shall not preside at the meeting during such discussion or vote on or take part in it. Any member of Gram panchayat may be chosen to preside at the meeting during the continuance of such discussion.

As per section 45(1) of the Act, 1993, on first meeting of the Gram panchayat where the Adhyaksha or Upadhyaksha is to be elected, the prescribed officer will preside while in subsequent meetings; the Adhyaksha will preside over it. But, then what should be the quorum of such meeting as the same is not clear from section 53 of the Act. It is no doubt true that section 53(2) of the Act, will operate at the subsequent meeting but it does not mean that the requirement of quorum as laid down in section 53(10 of the Act, is cut down by such provisions. Section 53(2) of the Act does not carve out any exception in connection with the quorum of any first meeting of panchayat. On the contrary, that sub-section opens with the saving clause meaning thereby that if otherwise provisions are made about presiding over a meeting under any other provisions of the Act, they will operate. That would save what is provided under section 45(1) of the Act, where the prescribed officer has to preside over the meeting without right to vote.

Therefore, on a conjoint reading of section 53(1) & (2) & section 45(1) of the Act,

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145 Karnataka panchayat Raj Act, 1993, sec53(3)
146 Ibid, sec 53(4)
147 Ibid, sec53(5)
it clearly emerges that on the first meeting of Gram panchayat where Adhyaksha or Upadhyaksha is to be elected, the prescribed officer will preside while in subsequent meetings where there is already an Adhyaksha duly elected will preside over it. So far as quorum is concerned the quorum must be 1/3 members for all meetings. The procedure for conducting the gram panchayat meeting has been provided in the Karnataka panchayat Raj (procedure at the meetings of Gram panchayat) Rules 1994.

No resolution of a Gram panchayat shall be modified or cancelled within six months after the passing thereof, except by a resolution passed by not less than one-half of the total number of members at an ordinary or special meeting, notice whereof shall have been given fulfilling the requirement of sub-section (3) of section 52 setting forth fully the resolution which it is proposed to modify or cancel at such meeting & the motion or proposition for the modification or cancellation of such resolution.

Minutes shall be kept of the members & the officers, if any present, & of the proceedings at each meeting of the Gram panchayat & if any member present at the meeting so desires, of the names of the members voting respectively for or against any resolution, in a book to be provided for the purpose & after they are read over & agreed to, shall be signed by the Adhyaksha Or Upadhyaksha or person presiding at such meeting, shall at all reasonable times be open to inspection by any member of Gram panchayat. Any person may inspect the copy of the minutes of the meeting. The minute’s book shall always be kept in the office of the Gram panchayat & shall be in the custody of the secretary of the Gram panchayat. A copy of every resolution passed by the Gram panchayat shall within ten days from the date of meeting is to be forwarded by secretary to the executive officer.

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148 Shekar Bandu prashanth V prescribed officer & others 1994(3) kar L.J. (DB)
149 Karnataka panchayat Raj Act, 1993, section, 54
150 Ibid, sec 55.
Any member may call the attention of the Adhyaksha to any neglect in the execution of the Gram panchayat work, to any waste of gram panchayat property or to be wants of any locality & may suggest any improvement, which may appear desirable. Every member shall have right to move resolutions & to interpolate the Adhyaksha on matters connected with the Administration of Gram panchayat, subject to such rules, as may be prescribed.\textsuperscript{151}

No disqualification or defeat in the election or appointment of any person acting as member, or as the Adhyaksha of Gram panchayat or Chairman or member of a committee of a gram panchayat constituted or appointed under this Act, 1993, shall be deemed to vitiate any act or proceedings of the Gram panchayat or of any such committee, as the case may be, in which such person has taken part whenever the majority who were parties such act or proceeding, were entitled to act. No resolution of a Gram panchayat or of any committee appointed under this act shall be deemed invalid on account of any irregularity in the service of notice upon any member provided that proceedings of the Gram panchayat or committee were not prejudicially affected by such irregularity.

Until the contrary is proved every meeting of Gram panchayat or of a committee constituted under this act, in respect of proceedings whereof a minute has been made & signed in accordance with this Act, shall be deemed to have been duly convened & held & all the members of the meeting shall be deemed to have been qualified & where the proceedings are the proceedings of a committee, such committee shall be deemed to have been duly constituted & to have had the power to deal with the matter referred to in minute. During any vacancy in a Gram panchayat or committee of a Gram panchayat, the continuing members may act as if no vacancy had occurred.\textsuperscript{152}

\textsuperscript{151} Karnataka panchayat Raj Act, 1993, sec 56.
\textsuperscript{152} Ibid, Section 57
Sections 141 & 181 of the Karnataka panchayat Raj Act, 1993 deals with meetings of Taluk panchayat & Zilla panchayat respectively. A Taluk panchayat or Zilla panchayat shall hold a meeting for the transaction of business at least once in two months & make regulations not inconsistent with the constitution of India, with the Karnataka panchayat Raj Act, 1993, or with any rules made there under with respect to the day, hour, notices, management & adjournment of its meetings & generally with respect to the transaction of business thereto. Every meeting of Taluk panchayat or Zilla panchayat shall ordinarily be held at the respective head quarters.\[^{153}\]

In Chandrakala V. The kodagu Zilla panchayat, Madikeri & others (2002)\[^{154}\] on a request made by 2/3 members of the Zilla panchayat, a special meeting had been called by the chief executive officer of the Zilla panchayat fixing the hour, day & place of the meeting. The meeting did commence at 11 A.M. in the place notified & Adhyaksha presided over the meeting & thereafter, she “absents” herself from the meeting. Because of her absence in the meeting, the same was presided over by Upadhyaksha on the request made by majority of the members of Zilla panchayat, who were still in the meeting Hall. In view of the provisions of sub-section (2)(e) of section 180 of the Act, if for any reason, the Adhyaksha or Adhyakshe is absent to preside over a meeting, the meeting can be presided over by Upadhyaksha.... Since the subject for which the meeting had been convened by the chief Executive officer could not be discussed & any resolution could be passed &, since the Adhyakshe was away from the place of meeting, Upadhyaksha had presided over the meeting & majority of the members of Zilla panchayat have expressed no-confidence in Adhyakshe. Therefore, it can not be said that the resolution passed in the proceedings held by 2\(^{nd}\) respondent under the chairmanship of the 3\(^{rd}\) respondent, in any way contrary to the provisions of sub-section (2)(e) of section 180 of the Act, 1993.

\[^{153}\] Karnataka Panchayat Raj Act, 1993, sec 141(1) & 180(1)
\[^{154}\] 2002(2) Kar L.J. 528 B
The date of first meeting of the Taluk panchayat or Zilla panchayat after the first constitution or re-constitution or the date of subsequent meeting for the purpose of election of Adhyaksha or Upadhyaksha, as the case may be, shall be fixed by the Assistant commissioner in case of Taluk panchayat & by the deputy commissioner in the case of Zilla panchayat who shall preside at such meeting & date of each subsequent ordinary meeting shall be fixed at the previous meeting of the Taluk panchayat or Zilla panchayat, provided that Adhyaksha may, for sufficient reasons, alter the date of meeting to a subsequent date. The Adhyaksha may, whenever he thinks fit, & shall upon the written request of not less than one third of the total number of members & on a date within 15 days from receipt of such request, call a special meeting. Such request shall specify the object for which the meeting is proposed to be called. If Adhyaksha fails to call a special meeting the Upadhyaksha or one-third of the total number of members may call the special meeting for a day not more than 15 days after presentation of such request & require the Executive officer in case of Taluk panchayat & Chief executive officer in case of Zilla panchayat to give notice to the members & to take such action as may be necessary to convene the meeting. Ten clear days' of notice of an ordinary meeting & seven clear days’ notice of a special meeting specifying the time at which such meeting is to be held & The business to be transacted there at, shall be sent to the members & pasted at the office. Such notice shall include, in the case of a special meeting any motion or proposition mentioned in the written request made for such meeting.

One-third of the total number of members of the Taluk panchayat or Zilla panchayat shall form a quorum for transacting business at the meeting. If at the time appointed for the meeting a quorum is not present, the person presiding shall wait for thirty minutes & if within such period there is a quorum proceed with the meeting, but if within such period there is no quorum, the presiding officer shall

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155 Karnataka Panchayat Raj Act, 1993, 141(2)(a) & 180(2)(a)
156 Ibid, sec 141(2)(b) & 180(2) (b)
adjourn the meeting to such hour on some future date as he may fix. He shall similarly adjourn the meeting at any time after it has begun if his attention is drawn to the want of quorum. At such adjourned meeting at which there is quorum the business, which would have been brought before the original meeting shall be transacted. Every meeting shall be open to the public unless the presiding authority considers that any enquiry or deliberations pending before Taluk panchayat or Zilla panchayat as the case may be should be held in camera & the said authority may at any time cause any person who interrupts the proceedings to be removed.

The provisions of section 53(2), (3), (4) & (5) shall apply mutatis mutandis, in respect of presiding the meeting of Taluk panchayat & Zilla panchayat, deciding the question by majority, take part in discussion & presiding in meeting who has pecuniary interest. No proposition shall be discussed at any ordinary meeting unless it has been entered in the notice convening such meeting or in the case of a special meeting, in the written request for such meeting. A member may propose any resolution connected with or incidental to the subjects included in the list of business. The Adhyaksha may propose any urgent subject or a routine nature not included in the list of business if no member objects to it. No person shall be given in the case of a motion or proposition to modify or cancel any resolution within six months after the passing thereof except in accordance with the provisions. The order in which any business or proposition shall be brought forward at such meeting shall be determined by the presiding authority, which in case it is proposed by any member to give priority to any particular proposition, Adhyaksha shall put the proposal to the meeting & be guided by the

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157 Karnataka Panchayat Raj Act, 1993, sec 141(2)(c) & 180(2) (c)
158 Ibid, sec 141(2)(d) & 180(2) (d)
159 Ibid, 141(2)(e)
160 Ibid, 180(2)(e)
161 Ibid, 141(2)(f),& 180(2)(f)
162 Ibid,141(2) (g),& 180(2)(g) & (h)
majority of votes for or against the proposal. Any ordinary meeting, with the consent of majority of members present be adjourned from time to time, but no business shall be transacted at any adjourned meeting other than left indisposed at the meeting from which the adjournment took place.

The provision of section 54 shall apply *mutatis mutandis* in respect of modification or cancellation of resolution subject to the fulfilling the requirement given in section 141(2) (b) & 180(2) (b) of the Act, 1993.

The proceedings of every meeting shall be recorded in the same minute’s book immediately after the deliberations of the meeting & shall after being read over by the presiding authority of the meeting be signed by him. The action taken on the decision shall be reported at the next meeting. A copy of every resolution passed at the meeting shall, within 10 days from the date of the meeting be forwarded to chief executive officer in case of Taluk panchayat & in the case of Zilla panchayat to the Government. During the vacancy in a Taluk panchayat or Zilla panchayat or any committee thereof continuing members may act as if no vacancy had occurred. The provisions of section 56 & 57 shall apply *mutatis mutandis* in respect of interpolations & resolutions & validity of proceedings of Taluk panchayat & Zilla panchayat as the case may be.

### 5.10: FUNCTIONS, DUTIES & POWERS

Under the obligations of 73rd constitutional Amendment state legislatures have created the panchayats. These panchayats in state of Karnataka should perform the functions & duties & exercise the powers within the limitations provided under the Karnataka panchayat Raj Act, 1993, which created them. The
Gram panchayat shall perform the functions specified in schedule I of the Act. The Taluk panchayat & Zilla panchayat shall perform their functions as specified in schedule II & III of the Act respectively. By virtue of notifications issued by the state Government under section 312 of the Act, which provide for amendments of schedules some schemes have been interchanged or transferred are re-allocated certain functions between the Gram panchayat, Taluk panchayat & Zilla panchayats. Where the state Government or central Government provides funds for the performance of any function specified in schedule I, II & III, Gram panchayat, Taluk panchayat & Zilla panchayat shall perform such functions in accordance with the guidelines or norms laid down for performing such functions.

Apart from the functions specified in schedule I & the schemes & programmes mentioned under the various notifications, it shall be obligatory on the part of a Gram panchayat in so far as the Gram panchayat fund at its disposal will allow, to make reasonable provisions within the panchayat area in regard to the following matters, namely;

1. Providing sanitary latrines including community latrines & its maintenance
2. Maintaining water supply works,
3. Revision of tax etc, periodically
4. Ensuring enrolment of children in primary schools
5. Achieving universal immunization
6. Registration of Birth & deaths
7. Providing sanitation & drainage.
8. Maintenance of record relates to population census & livestock census & other important function, relates to dwelling houses, health exhibition, seminars & contribution, to medical & other charitable institutions, may be made at its discretion

170 Karnataka Panchayat Raj Act 1993. sec 58(1-A)(2)&(3)
Further, the Government may, by notification & subject to such conditions as may be specified therein;

a) Transfer to any gram panchayat the management & maintenance of a forest situated in the panchayat area.
b) Make over to the Gram panchayat the management of waste lands, pasture lands, or vacant lands belonging to the Government situated within the panchayat area.
c) Entrust the gram panchayat with the collection of land revenue on behalf of Government & the maintenance of such records as are connected therewith.
d) Entrust such other functions as may be prescribed;

Provided that no entrustment under clause(c) shall be made without the concurrence of the Gram panchayat concerned. Further, when any transfer of the management & maintenance of a forest is made under clause (a), the Government shall direct that any amount required for such management & maintenance of an adequate portion of the income from such forest be placed at the disposal of the Gram panchayat. The Government may, by notification withdraw or modify the functions assigned under this section.\textsuperscript{171}

As regards the Taluk panchayat is concerned besides performing functions specified in the schedule II, & the guide lines of state Government or central Government, it shall be obligatory on the part of Taluk panchayat, in so far as the Taluk panchayat fund at its disposal will allow, to make reasonable provision within the area under its jurisdiction in respect of the following matters, namely;

1. Construction & augmentation of water supply works to the level of not less than forty liters per individual per day.

\textsuperscript{171} Karnataka Panchayat Raj Act 1993. sec 59.
2. Filing half yearly report regarding the activities of Gram panchayats within the Taluk regarding;
   a) Holding of Gram sabha;
   b) Maintenance of water supply works;
   c) Construction of Individual & community latrines;
   d) Payment of electricity charges;
   e) Enrollment I schools;
   g) Progress of immunisation

3. Providing adequate number of class rooms & maintaining primary school buildings in proper conditions including water supply & sanitation

4. Acquiring land for locating the manure pits away from the dwelling house in the villages.\(^{172}\)

The Government may assign to a Taluk panchayat, functions in relation to any matters to which the executive authority of the Government extends or the functions, which have been assigned to the state government by the central government. Further, the government may, by notification, withdraw or modify the functions assigned under this section\(^{173}\).

Under section 184 of the Karnataka panchayat Raj Act, 1993, it shall be obligatory on the part of Zilla panchayat so far as the Zilla panchayat fund at its disposal will allow, to make reasonable provision within the area under its jurisdiction, in respect of the following matters, namely;

1. Establishment of health centers including maternity centers so as to cover the entire population within five years, as per the norms lay down by the state government.

\(^{172}\) Karnataka Panchayat Raj Act, 1993, sec, 145.
\(^{173}\) Ibid, sec 146.
2. Construction of underground water recharges structures to ensure availability of water in the drinking water wells.

3. Prevention of drilling of irrigation bore wells in the vicinity of drinking water wells to ensure adequate drinking water, especially in lean season.

4. Drawing up a plan for social forestry development in each Taluk & spending not less than such percentage of the district plan allocation every year as may be specified by the government from time to time.\textsuperscript{174}

The provision of section 146 shall apply mutatis mutandis to Zilla panchayat in respect of assignment of functions etc.\textsuperscript{175}

\textbf{5.11: TAXES & FEES}

The constitution of India under Article 243-H has facilitated the legislature of a state by law; a) authorize a panchayat to levy, collect & appropriate such taxes, duties, tolls & fees in accordance with such procedure & subject to such limits. b) Assign to a panchayat such taxes, duties, tolls & fees levied & collected by the state government for such purposes & subject to such conditions & limits.

Under the Karnataka panchayat Raj Act, 1993 every Gram panchayat shall in such manner & subject to such exemptions as may be prescribed & not exceeding the maximum rate specified in schedule IV, levy tax upon buildings & lands which are not subject to agricultural assessment, within the limits of the panchayat area. Provided that where an owner of the building or land has left the panchayat area or cannot otherwise be found, the occupier of such building or land shall be liable for the tax leviable on such owner. A gram panchayat may also levy all or any of the following taxes & fees at such rates as the Gram panchayat may

\textsuperscript{174} Karnataka Panchayat Raj Act, 1993, sec 184(2)
\textsuperscript{175} Ibid, sec 185
by by-laws determine but not exceeding the maximum specified in schedule-IV & in such manner & subject to such exemptions as may be prescribed, namely;

a) Tax on entertainment other than cinematograph shows;
b) Tax on vehicles, other than motor vehicles;
c) Tax on advertisements & hoarding
d) Pilgrim fees on persons attending jatras, festivals, etc., where necessary arrangements for water supply, health & sanitation are made by the Gram panchayats.
e) Market fees on persons who expose their goods for sale in any market place.
f) Fee on the registration of cattle brought for sale in any market place.
g) Fees on Buses & taxies & auto-stands provided adequate facilities are provided for the travelers by the Gram panchayat, &
h) Fee on grazing cattle in the grazing lands176

Under section 200 of the Act, 1993 the Gram panchayat shall take steps to recover taxes & other dues. When any tax, cess, rate or fee becomes due, Gram panchayat shall with the least practicable delay, cause to be presented to the person liable for the payment thereof a bill for the amount due from him, specifying the date on or before which amounts shall be paid.

If any person fails to pay any tax or fee any other sum due to the Gram panchayat under this Act, 1993 or the rules or by-laws on or before the specified date of payment the Gram panchayat shall cause a notice of demand in the prescribed form to be served on the defaulter.177 The presentation of every bill & the service of every notice of demand shall be effected by the secretary or an officer duly authorized by him in this behalf in accordance with the procedure

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177 Ibid, sec 200(2)
relating to service of notice.\textsuperscript{178} If the tax, rate, fee or other amounts for which a notice of demand has been served is not paid within 30 days from the date of such service, the Gram panchayats may recover the amount due along with a penalty of ten percent of the sum due, by distraint & sale of the immovable property of the defaulter in the prescribed manner.\textsuperscript{179} Further, fees for,-

a) Every distraint made,

b) Every notice of demand issued &

c) The cost of maintaining any livestock seized shall be chargeable at such rates as may be prescribed.\textsuperscript{180}

Notwithstanding anything contained in the forgoing sub-section, any tax, rate or fee payable to a Gram panchayat shall be recoverable as arrears of land revenue\textsuperscript{181}. Subject to such rules as may be prescribed, any person aggrieved by the assessment, levy or imposition of any tax, rate or fee under section 199 of Karnataka panchayat Raj Act, 1993, may appeal to the prescribed authority, whose decision shall be final.\textsuperscript{182}

5.12: STAFF OF GRAM PANCHAYAT

In view of the statutory powers under Article 111, the secretary is competent to perform all duties & exercise all powers conferred upon him under the Act or by the bye-laws. The secretary shall perform the following functions, namely.

a) Submit to the Gram panchayat the monthly accounts of the Gram panchayat before the tenth day of succeeding month;

\textsuperscript{178} Karnataka Panchayat Raj Act, 1993, sec 200(3)
\textsuperscript{179} Ibid, sec 200(4)
\textsuperscript{180} Ibid, sec 200(5)
\textsuperscript{181} Ibid, sec 200(6)
\textsuperscript{182} Ibid, sec 201
b) Furnish returns, statement of accounts & such other information when called for, by the government or the auditor;

c) Inspect or cause to be inspected the accounts of institutions under the control of Gram panchayat;

d) Keep records of the Gram panchayat, standing committees, & other committees, Gram sabha & ward sabha;

e) Co-ordinate the preparation of the annual plan & five year plan so that the approved plan is submitted to the district planning committee in time;

f) Disburse Gram panchayat fund & plan fund to the officers concerned & furnish utilization certificate in the manner prescribed.

The Government may, by order, specify the staffing pattern, the scales of pay & mode of recruitment of staff of Gram panchayats\(^\text{183}\) The Gram panchayat shall determine & submit for approval of the chief executive officer a schedule of employees specifying the designation & grades & the salaries & allowances payable to its officers other than the secretary required for carrying out the duties imposed upon the Gram panchayat by or under this Act. In \textit{Rajappa & another V Haronahalli gram panchayat, channagiri Tq, Davangere, district (2005)}\(^\text{184}\) it was held, that from the language employed in sub-section 113 of the Act, it is clear that the appointing authority is the Gram panchayat & such appointment shall be made with the prior approval of the chief executive officer. Merely because the prior approval of the chief executive officer is required for the appointment employees of the Gram panchayat, it can not be said that it is the chief executive officer who is the appointing authority & that the role of the gram panchayat is only recommendatory. It is the Gram panchayat which initiates proceedings for recruitment of employees. It is they who select the candidates in

\(^{183}\) Karnataka Panchayat Raj Act, 1993, sec 112

\(^{184}\) 2005(1) kar. L.J. 373 A
accordance with law with the prior approval of the chief executive officer, appoint those candidates & pay their salaries from the Gram panchayat fund... In so far as initiating the disciplinary proceedings against these employees is concerned, no such prior approval of the chief executive officer is contemplated. If any disciplinary proceedings have to be initiated against the employees of the Gram panchayat the principle of natural justice have to be followed in as much as a notice has to be issued to the delinquent employee before any action is taken. After considering the reply given to the show cause notice, the authorities under the Act are empowered to impose punishment on such employees. The two authorities which are vested with the power to impose punishment on the employees of the Gram panchayat are the secretary & the gram panchayat.185

However, it is pertinent to mention that many officials of state Government posted at the district & Taluk levels did not want to work under the administrative control of elected panchayats. Besides, the key functionaries, namely secretaries & executive officers at all levels of panchayat are state Government employees. The subordination of panchayats to routine administration has been further accentuated by a number of factors.

1. The goals of self government has been subordinated to all that passes for development

2. The goals of development are set by the Governments, which are more sensitive to state legislature than to panchayats.

3. The executive authority for these goals has traditionally been the routine district administration

4. Because the 73\textsuperscript{rd} amendment has only illustratively indicated the functions of panchayats instead of allotting them specifically to panchayats, it has

185 Karnataka panchayat Raj Act, 1993. sec 113(2) & (3)
only ended up confirming the traditional practice under which the District bureaucracy has always had authority over most of these “development” functions. The subordination was further accentuated when an old agency the bureaucracy, the district administration board was imposed in the state on Zilla panchayats, the apex of panchayat pyramid\textsuperscript{186}

For ensuring administrative autonomy, the panchayats should have their own service cadre\textsuperscript{187} as state government of Karnataka has transferred functionaries pertaining to all 29 subjects to the panchayats.

\textsuperscript{186} Pran Chopra, panchayat Raj in Karnataka-Need to revive old spirit. Deccan Herald, 31.10.2003.
\textsuperscript{187} "Panchayat civil services"