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CHAPTER – 03

CONSTITUTIONAL FRAMEWORK & LEGAL REGIME FOR DECENTRALISED DEMOCRACY

In 1988, the consultative committee of the Indian parliament chaired by P.K. Thungon made recommendations for revamping the panchayat Raj institutions in the country. The committee strongly urged for giving constitutional status to the panchayat Raj institutions. Based on it, on 15th May 1989 the constitution (64th Amendment) Bill was drafted and introduced in parliament by the then Prime Minister Mr. Rajeev Gandhi. The Bill lapsed with the dissolution of the parliament.

The Narasimha Rao government, which came to power after the general election of 1991, reintroduced the bill on the 16th September 1991 to incorporate local government including panchayat Raj endowing it with power, resources & independence for its effective functioning. The noticeable feature was that Rao government had consulted all major political parties in the drafting of the bill. The bill was referred to a joint committee of parliament. The committee after detailed deliberations presented its report to parliament in July 1992 taking in to consideration the consensus evolved during the meetings of joint select committee & also the points raised by the various leaders of different political parties during the debate held in December 1992, necessary amendments were brought in by the government. The bill was passed with near unanimity by the lok sabha on 22nd
December & by the Rajya sabha on 23rd December 1992. With its ratification by 17 state assemblies, it has emerged as the constitution (73rd Amendment) Act 1992 & came into force from April 24th 1993. In May 1993, the Constitution (73rd Amendment) Act 1992 was notified by the central government & as such has became a part of the constitution of India. As a result panchayat Raj institutions have become the third layer of the governmental system & so for the constitutional status is concerned, for the first time, on par with the central & state governments.

3.1: THE CONSTITUTION (73rd AMENDMENT) ACT 1992

Though the panchayat Raj institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status & dignity of viable & responsive people’s bodies due to a number of reasons including absence of regular elections, prolonged super sessions, insufficient representation of weaker sections like scheduled castes, scheduled tribes & women, inadequate devolution of powers & lack of financial resources.

Article 40 of the constitution of India, which enshrines one of the directive principles of state policy, lays down that the state shall take steps to organize village panchayats & endow them with such powers & authority as may be necessary to enable them to function as units of self government. It is considered that there is an imperative need to enshrine in the constitution certain basic & essential features of panchayat Raj institutions to impart certainty, continuity & strength to them.

Accordingly, it was proposed to add a new part relating to panchayats in the constitution to provide for among other things, Gram sabha in a village or group of villages; constitution of panchayats at village & other level or levels; direct elections to all seats in panchayats at the village & intermediate level, if any, & to the office of chairpersons of panchayats at such levels; reservation of seats

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1 Part ix of the constitution of India.
for the scheduled castes & scheduled tribes in proportion to their population for membership of panchayats & office of chairpersons in panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for panchayats, & holding elections within a period of 6 months in the event of super session of any panchayat; disqualifications for membership of panchayats; devolution by the state legislature of powers & responsibilities upon the panchayats with respect to the preparation of plans for economic development & social justice & for the implementation of development schemes; sound finance of the panchayats by securing authorisation from state legislatures for grants-in-aid to the panchayats from the consolidated fund of the state as also assignment to, or appropriation by, the panchayats of the revenues of designated taxes, duties, tolls & fees; setting up of a finance commission within one year of the proposed amendment & thereafter every 5 years to review the financial position of panchayats; auditing of accounts of the panchayats; powers of state legislatures to make provisions with respect to elections to panchayats under the superintendence, direction & control of the chief electoral officer of the state; application of the provisions of the said part to union territories; excluding certain states & areas from the application of the provisions of the said part; continuance of existing laws & panchayats until one year from the commencement of the proposed amendment & barring interference by courts in electoral matters relating to panchayats.

The statement of objects & reasons of the constitution (73rd Amendment) Act 1992 makes it clear the raison de-etre of this Act is to fulfill the mandate of Article 40. Accordingly part ix was added to the constitution which specifies the basic structure, composition, powers, functions & election procedure of panchayat Raj institutions. Article 243 of the constitution is the key to the whole scheme of
devolution. The Amendment will have a uniform applicability in the country. The state legislatures have been given time up to a maximum of one year from the commencement of this Amendment Act so as to conform to the provisions contained in the constitution of India. State have to act in consonance with the spirit with which the government of India has embarked upon the major task of laying down a constitutional framework for establishing a strong & viable panchayat Raj system.

The 1992 Act seeks to achieve the aforesaid objectives.

The panchayat Raj institutions (PRIs) came into being as institutions of self-governance. With the approval of the constitution of India & it is placed in the third stratum of the hierarchy of the institutions of the governance. Articles 243, 243A to 243-o in part IX of the constitution of India deals with PRIs. It enjoys the constitutional status as enjoyed by the parliament & state legislatures in terms of its existence & is a permanent institution with specific role & responsibilities.

The constitution (73rd Amendment) Act 1992 provides a basic framework of decentralization of powers, functions & responsibility to the panchayat Raj institutions at different levels. However, Responsibility for giving it a practical shape in the field rests with the states.

The constitution (73rd Amendment) Act 1992 is consisting of 16 Articles & the eleventh schedule to the constitution. The 73rd Amendment Act envisages the 'Gram sabha' as the foundation of the panchayat Raj system to perform functions & powers entrusted to it by the state legislatures.

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2 The constitution (73rd Amendment) Act 1992 has added a new part ix consisting of 1 Articles & the eleventh schedule to the constitution.
3 However, the 73rd constitutional amendment is not applicable to Jammu & Kashmir, Nagaland, & certain scheduled areas of the country. Art 243M, & Art 244(2)—constitution of India.
4 Art, 243N—constitution of India.
The Amendment provides for a three-tier panchayat Raj system at the village, intermediate & district levels. Small states with population below twenty lakhs have been given the option not to constitute the panchayats at the intermediate level. The Act provides that the panchayat bodies will have an assured duration of five years, with election mandatory after this period. However, under the Amendment Act the establishment of panchayats & the devolution of necessary powers & authority on the panchayat Raj institutions are vested in the state governments. In view of this it may be said that the success of the panchayat Raj institutions as a unit of democracy & thereby ushering an all round development of rural areas will much depend on the intention of support of the state governments. Without honest intention, these institutions would be misused by rural rich & the poor & illiterate masses will remain as mute spectators as it is happening in parliamentary & state Assembly elections.

Article 243A provides that Gram sabha may exercise such powers & perform such functions at the village level as the legislature of a state may by law provide.

Article 243B visualises a three-tier panchayat Raj system. It provides that in every state there shall be constituted panchayat at the village, intermediate & district levels. Small states having a population not exceeding twenty lakhs have been given an option not to constitute the panchayats at the intermediate level.

Article 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 the territorial area of a

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5 Constitution of India, Article 243(B)(2),
6 Ibid, Art,243C,
7 Ibid Art, 243E
8 Ibid Art,243E(3) (4)
10 'Gram sabha' means a body consisting of persons registered in the electoral rolls relating to a village Comprised within the area of panchayat at the village level.
panchayat at any level & the number of seats in such panchayats to be filled by
election shall, so far as possible, be the same throughout the state.

All the seats in a panchayat shall be filled by the persons chosen by direct
election from territorial constituencies in the panchayat area. For this purpose each
panchayats area shall be divided into territorial constituencies in such manner that
the ratio between the population of each constituencies & the number of seats
allotted to it, so far as practicable, be the same throughout the panchayat area.\footnote{Art, 243C (2), Constitution of India.}

The legislature of a state may by law provide for representation of
following persons in panchayats-

(1) The chairman of the panchayats at the village level, in the panchayats at
the intermediate level or in the case of a state not having panchayats at
the intermediate level, in the panchayat at the district level;

(2) The chairpersons of the panchayats at the intermediate level, in the
panchayats at the district level;

(3) The members of the lok sabha & the legislative Assembly of the state
representing constituencies which comprise wholly or partly a
panchayat area at the level other than the village level, in such
panchayats;

(4) Of the members of the council of states (Rajya sabha) & the members
of the legislative council of the state, where they are registered as
electors within-

(i) A panchayat area at the intermediate level, in panchayat at the
intermediate level;

(ii) A panchayat area at the district level, in panchayat at the district
level.\footnote{Art, 243(3) Constitution of India.}

(5) The chairpersons of a panchayat & other members of a panchayat
whether or not chosen by direct election from territorial constituencies
in the panchayat area shall have the right to vote in the meetings of the
panchayats.
(6) The chairperson of-

(a) A panchayat at the village level shall be elected in such manner as the legislature of a state may, by law, provide; &

(b) A panchayat at the intermediate level or district level shall be elected by, & from amongst, the elected members thereof.

Disqualification for membership;

A person shall be disqualified for being chosen as, & for being member of panchayats—

(a) If he is so disqualified by or under any law for the time being in force for the purposes of elections to the legislature of the state concerned;

(b) If he is so disqualified by or under any law made by the legislature of the state.

But no person shall be qualified on the ground that he is less than 25 years of age under clause (a), if he has attained the age of 21 years.

If any question arise as to whether a member of a panchayat has become subject to any of the disqualifications mentioned in clause (1) the question shall be referred for the decision of such authority & in such manner as the legislature of a state may, by law, provide.\(^\text{13}\)

3.2: RESERVATION FOR MARGINALISED CLASS

Reservation of seats for SCs/STs (dalits) in the state legislature (Art: 332) & union parliament (Art: 330) has been made possible by the provisions under the constitution of India. Members elected from the reserved constituencies are always looked at from the party perspective & not on caste perspective. However, it is very difficult for dalits to emerge as they are seen by the society from caste

\(^\text{13}\) Art 243F (2) Constitution of India.
perspective. The whole of human rights violations, discriminations, social injustice, are the frequent occurrence at the grass roots level. Hence, it is more appropriate that responsibilities of administering social justice could be handed over to lower-level institutions of governance & thereby it has been handed over to local bodies. Proportionate to the population of dalits reservation of seats for them in local self governing bodies has been made through 73rd constitutional amendment itself & thus adequate representation has been given to SCs/STs in panchayat Raj institutions.

Article 243D provides that in every panchayats seats shall be reserved for the scheduled castes & scheduled tribes. The number of seats so reserved shall be, as nearly as may be, in the same proportion to the total number of seats to be filled by direct election in that panchayat as the population of the SCs & STs in that panchayat area bears to the total population of that area & such seats may be allotted by rotation to different constituencies in a panchayat.

Out of total number of seats reserved under clause (1) not less than 1/3 seats shall be reserved for women belonging to the SCs & STs [clause (2)] out of total number of seats to be filled by direct election in every panchayat not less than (including the number of seats reserved for SCs & STs women) seats shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a panchayat [clause (3)]

Reservation of seats for women in all the levels of local self government bodies is a new plan of governance. One third of seats have been reserved for women representatives in view of 73rd constitutional amendment. This has propelled the whole nation moot out another demand of the same proportion of reservation of seats for women in the state legislatures & union parliament. And a bill in this regard has already been initiated in the Rajya sabha. Thus, by giving the opportunity of taking decision to the women; the drudgery of women would be reduced.
The office of the chairpersons in the panchayats at the village or any other level shall be reserved for SCs & STs & women in such manner as the legislature of a state may, by law, provide. But the number of offices of chairpersons reserved for the SCs & STs in the panchayats at each level in any state shall be, as nearly as possible, in the same proportion to the number of such offices in the panchayats at each level in proportion of the total population of the SCs/STs in the state. However, not less than 1/3 of the total number of the offices of chairperson in the panchayat at each level shall be reserved for women. The number of offices reserved under this clause shall be allotted by rotation to different panchayats at each level.\(^{14}\)

The reservation of seats under clause (1) & (2) & the reservation of offices of chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period (50 years) specified in Art 334 [clause(5)].

The legislature of a state is empowered under clause (6) to make provision or reservation of seats in any panchayat or office of chairpersons in the panchayats at any level in favour of backward classes of citizens.

3.3: POWERS, AUTHORITY & RESPONSIBILITY OF PANCHAYAT

Article 243G, provides that subject to the provisions of this constitution the legislature of a state may, by law, endow the panchayats with such powers & authority as may be necessary to enable them to function as an institution of self government. Such law may contain provisions for the devolution of powers & responsibilities upon panchayats subject to such conditions as may be specified therein, with respect to-

\(^{14}\) Art.243D (4)
(a) The preparation of plans for economic development & social justice;
(b) The implementation of schemes for social development & social justice as may be entrusted to them including those in relation to the matters listed in the eleventh schedule.

The normal distribution of powers under Arts 245 & 246 cannot be affected by the state legislature while vesting with powers & authorities upon the panchayats. Thus, Art 243G is subjected the provisions of the constitution of India.

3.4: POWERS TO IMPOSE TAXES & FUNDS OF PANCHAYTS

Article 243H empowers a state legislature to make by law provision for imposing taxes etc, by the panchayats. Such a law-

(a) Authorise 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.

(c) Provide for making such grants-in aid to the panchayats from the consolidated fund for the state; and

(d) Provide for constitution of such funds for crediting all moneys received, by or on behalf of the panchayats & also for the withdrawal of such money wherefrom.

3.5: CREATION OF FINANCE COMMISSION

The 73rd constitutional amendment has incorporated a provision for constituting a finance commission in every state. The finance commission has to suggest the ways & means to share the resources between local bodies & the state
government & in the same way, now local bodies could be strengthened. Thus, finance has been ensured regularly to local self-governing bodies.

The Governor of a state shall within one year from the constitution (73rd Amendment) Act 1992 & thereafter at the expiration of every fifth year, constitute a finance commission. The legislature of the state may by law, provide for the composition of the commission, the qualifications requisite for appointment of its members & the manner in which they shall be selected.

It shall be the duty of the Finance commission to review the financial position of the panchayats & to make the recommendations to the Governor as to-

(a) The principles which should govern-

(i) The distribution between the state & the panchayats of the net proceeds of the taxes, duties, tolls & fees leviable by the state, which may be divided between them under this part & the allocation between the panchayats at all levels of their respective shares of such proceeds;

(ii) The determination of the taxes, duties, tolls & fees which may be assigned to, or appropriated by, the panchayat;

(iii) The grant-in-aid to the panchayats from the consolidated fund of the state;

(b) The measures needed to improve the financial position of the panchayats;

(c) Any other matter referred to the finance commission by the Governor in the interests of sound finance of the panchayats.

The commission shall determine its procedure & shall have such powers in the performance of its functions as the state legislature may, by law, confer on it. [Clause (3)]

The Governor shall cause every recommendation made by the commission together with in explanatory memorandum as to the action taken thereon to be laid before the legislature of the state.[clause(4)]
3.6: ELECTION TO THE PANCHAYATS

Under Article 243k the superintendence, direction & control of the preparation of electoral rolls & conduct of all elections to the panchayats shall be vested in a state Election commission consisting of the state Election commissioner to be appointed by the Governor. Subject to the provisions of any law made by the state legislature, the condition of service & tenure of office of the state Election commissioner shall not be removed from his office except in like manner & on like grounds as a judge of a High court. The conditions of service of the state Election commissioner shall not be varied to the disadvantage after his appointment. [clause (2) proviso]

The Governor of state shall, when so required by the state Election commissioner, make available to commission such staff as may be necessary for the discharge of its functions.[clause(2)]

The state legislature may, subject to the provisions of the constitution of India, by law, make provisions with respect to all matters relating to or in connection with election to the panchayats [clause(4)]

3.7: THE DISTRICT PLANNING COMMITTEE (DPC)

Highly centralized planning cannot properly respond to the local needs, resources & aspirations. Power associated with such centralized model both of generalists & technocrats conflict with the aspirations of local strata & elite’s who can mobilize the local power strata. Decentralised planning in the real sense would imply a complete change in the planning set up from the prevailing bureaucratic-technocratic frame work to a participatory one. This would require that the district planning committee should work directly under Zilla parishad & this should be followed by a similar arrangement at lower levels of planning at the taluk & the village. Decentralised planning becomes most meaningful & effective when the
people themselves become the planners at the village level & taluk level & at District level.\textsuperscript{15}

There shall be constituted in every state at the district level a District planning committee to consolidate the plans prepared by the panchayats & the municipalities in the district & to prepare a draft development plan for the district as a whole. (Art 243zd). Thus, DPC a constitutional creation has a specific purpose of initiating the planning process from the grass root level in contrast to the role of planning commissions at the centre & states which are non constitutional entities. For the development of the whole district, the DPC has to prepare a perspective plan. Thus, the central concept planning has been recognized at all the three levels as institutions of governance functions at all the three levels to administer development.

3.8: APPLICATION TO UNION TERRITORIES

Art 243L says that the provisions of this part shall apply to the union territories & shall, in their application to a union territory have effect as if the reference to the governor of a state were reference to the Administrator of the union territory appointed under Article 239 & reference to the legislature or legislative assembly of a state were reference, in relation to a union territory, having a legislative assembly, to that legislative Assembly.

3.9: ELEVENTH SCHEDULE & 29 SUBJECTS THEREIN

The Panchayat Raj institutions are grounded perfectly in the domain of governance authoritatively only through the eleventh schedule & 29 subjects therein.

\textsuperscript{15} Prasad kamath, "Restructuring of planning" Rama Reddy (ed) Pattern of panchayat Raj in IndiaMacmillan, Co, India Ltd.New Delhi,(1977), p 100.
Article 243G of the constitution of India confers the powers, authority & responsibilities of panchayats. Subject to the provisions of this constitution the legislature of a state may by law, endow the panchayats with such powers & authority & may be necessary to enable them to function as institutions of self government & such law may contain provisions for the devolution of powers & responsibilities upon panchayats, at the appropriate level, like the VII schedule & union list, state list & concurrent list therein, panchayat subjects have been indicated under 29 subjects under the XI schedule of the constitution of India. Amongst the 29 subjects, which of the subjects are to be allocated to gram panchayat & other levels could be spelt out by the state government through an enactment. The 73rd constitutional Amendment Act has indicated the suggestive items & it is not an exhaustive list. If the state government wants to give more powers to the local bodies, there is no bar. It is more appropriate to designate 29 items of the eleventh schedule as panchayat list.

3.10: PANCHAYAT RAJ JURISPRUDENCE: A REVIEW OF CENTRAL ACTS

The following Eleven central enactments & two rules which have nexus with the working model of panchayats. They are analysed as to the need & scope for modification in relevant sections to reflect the mandate of the constitution of

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India for functional approach of panchayats envisaged under Articles 243G & 243N.

1. The Indian forest Act 1927

Section 28 deals with formation of 'village forests'. The State Government may assign to any village community the rights of Government to or over any land which has been constituted a reserved forest and may cancel such assignment. All forests so assigned may be called village forests. The state government may make rules for regulating the management of village forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest produce or pasture and their duties for the protection and improvement of such forest.

This section may be suitably revised. Clause (1) may be revised as, (1) the State Government may assign to any village Panchayat the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village forests.

Clause (2) may be revised as (2) The State Government may make rules for regulating the management of village - forests, prescribing the conditions under which the village panchayat to which any such assignment is made may be provided with timber or other forest produce or pasture, and their duties for protection and improvement of such forest. The revised clause will help in establishing the role of Panchayats in the control over Minor Forest Produce which is a subject assigned to Panchayats vide Entry 7 of the 11th Schedule of the Constitution.

Likewise Sec. 39 which deals with the power to impose duty on timber and other forest-produce Clause (1) of this section reads, (1) The Central Government may levy a duty in such manner, at such place and at such rates as it may declare by notification in the official Gazette on all timber or other forest produce - (a)
which is produced in the (the territories to which this Act extends), and in respect of which the Government has any right; (b) Which is brought from any place outside (the territories to which this Act extends). This clause may be revised as (1) The Central Government may assign to the Panchayats the powers to levy a duty in such manner, at such places, and at such rates as it may declare by notification in the official Gazette on all timber or other forest produce - (a) which is produced in [the territories to which this Act extends], and in respect of which the Government has any right; (b) which is brought from any place outside [The territories to which this Act extends]. The revised provisions are necessary for Panchayats to enable them carry their role in Minor forest produce, while has been allotted to them in the Eleventh Schedule of the Constitution.


Section 3 of the Forest (Conservation) Act, 1980 deals with the constitution of an advisory committee. Sec. 3 reads as "Constitution of Advisory Committee - The Central Government may constitute a Committee consisting of such number of persons as it may deem fit to advise that Government with regard to –

(i) The grant of approval under section 2; and

(ii) Any other matter connected with the conservation of forests which may be referred to it by the Central Government. Section 2A of the Forest (Conservation) Rules, 1981 refers to who may be included in the Committee Constituted under Section 3 of the Forest (Conservation) Act, 1980. Sec. 2A reads. "Composition of the Committee - (1) The Committee shall be composed of the following members:

(i) Inspector-General of Forests - Ministry of Environment and Forests - Chairman
(ii) Additional Inspector General of Forests, Ministry of Environment and Forest - Member
(iii) Joint Commissioner (Soil Conservation), Ministry of Agriculture - Member.
(iv) Three Eminent Environment Scientists (non-officials) - Members

(v) Deputy Inspector General of Forests (Forest Conservation), Ministry of Environment and Forests - Member Secretary.

(2) Additional Inspector General of Forests shall act as the chairman in the absence of Inspector - General of Forests.

It is suggested that this section may suitably be amended/revised to include the role of elected Panchayati Raj representative in the Advisory Committee since Panchayats should be assigned their due role in forest conservation as envisaged under the Constitution (Schedule 11 of the Constitution has allocated the subject of the Maintenance of Community assets under the functional domain of the Panchayats). Moreover the local governments (Panchayats) of the area have better knowledge about the natural assets (forest) which fall under their jurisdiction and can therefore better manage and supervise them. It is therefore suggested that representatives of PRIs should be included in the Advisory Committee set up under Sec. 3 of the Forest (Conservation) Act, 1980.

Therefore Rule 2A of the Forest Conservation Rules should also be suitably amended and a new clause (vi) may be added which could be read as:

Rule 2.3 A. Composition of the Committee

(1) The Committee shall be composed of the following members -

(vi) Three elected representatives from the Panchayati Raj Institutions.

3. The Wildlife (Protection) Act, 1972

Sec. 6 of the wildlife (protection) Act refers to constitution of Wild Life Advisory Board. It says, Sec. 6. Constitution of Wild Life Advisory Board - (1) The State Government, or, in the case of a union territory, the Administrator, shall, as soon as may be after the commencement of this Act, Constitute a Wild Life Advisory Board, consisting of the following members, namely.
(b) Two members of the state Legislature or, in the case of a union territory having a legislature, two members of the Legislature of the Union Territory, as the case may be. This section may be suitably amended to include the representation of at least two elected representatives of the Panchayati Raj Institutions from the state or union territory as the case may be, as Panchayats have been vested with the functions of maintenance of community assets as per Eleventh Schedule and they are better equipped to supervise the aims of the Act since they are closer to the grassroots and local forests and their knowledge and experience in wildlife conservation should be fully utilised. Wildlife is a community asset and hence falls under functional domains of the Panchayats.

4. Water (Prevention and Control of Pollution) Act, 1974

Since water is a community asset and a common property resource, its control and management should be vested in the local governments (the Panchayats) of the area, since the Panchayats are the guardians of people's interest and their resources, therefore the management and control of pollution of local water bodies is best done by the Panchayats. The following sections of the Water (Prevention and Control of Pollution) Act, 1974 require necessary amendments for vesting the Panchayats with due role in prevention and control over water pollution.

Section 4 of this Act deals with the constitution of state Boards for the prevention and control of water pollution. It is submitted that a suitable amendment is required in sub section 2 (C) to give representation for elected members of Panchayati Raj Institutions (PRIs) functioning in the state.

Sec. 4, sub section (2) clause (c) is reproduced below:

Sec. 4 Constitution of State Boards - (1) The state government shall with effect from such date as it may, by notification in the official Gazette appoint, constitute a (State Pollution Control Board), under such name as may be specified
in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) A state Board shall consist of the following members, namely:

(c) Such number of persons, not exceeding five to be nominated by the state government from amongst the members of the local authorities functioning within the state.

Sub Section (C) of the above may be revised to: such number of persons, not exceeding five, to be nominated by the state government from amongst the elected members of the Panchayats functioning within the state. This revision will help in envisaging a role for PRI representatives in State Pollution Control Board since drinking water is a subject coming under the functional domain of the Panchayats as per entry 11 of the 11th schedule of the Constitution of India.

Section 14 of the Water Act refers to the composition of the Joint Board of two or more states.

Sec. 14 (2) (c) says "A Joint Board constituted in pursuance of an agreement entered into under clause (a) of sub-section (1) of section 13 shall consist of the following members, namely:

(c) one person to be nominated by the Central Government from amongst the members of the local authorities functioning within the participating Union Territory or each of the participating union territories, as the case may be and one person to be nominated, from amongst the members of the local authorities functioning within the participating state or each of the participating state as the case may be, by the concerned participating State Governments:

Sub-Section (c) above may be revised as:

(a) One person to be nominated by the Central Government from amongst the members of the Panchayati Raj Institutions functioning within the participating union territories on each of the participating union territories as the case may be.
and one person to be nominated from amongst the members of Panchayati Raj Institutions functioning within the participating state or each of the participating states as the case may be, by the concerned participating state governments.

Section 17 (b) and 17 (n) of the Water (Prevention and Control of Pollution) Act, 1974 refer to the functions of the State Board.

Sec. 17 (b) and Sec. 17 (n) reads:

Sec.17. Functions of State Board (1) Subject to the provisions of this Act, the functions of a state Board shall be-

(a) to advice the state Government on any matter concerning the prevention, control or abatement of water pollution.

(n) to advise the state government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well.

Sec. 17 (b) may be revised as "to advise the state government and the Panchayats on any matter concerning the prevention, control or abatement of water pollution. "Likewise Sec. 17 (n) may be revised as" to advise the state government in consultation with the Panchayats of that area in respect to the location of any industry the carrying on of which is likely to pollute a stream or well.

These amendments would help in envisaging a clear role for PRIs in the affairs of the State Pollution Control Board according to their functional domain for drinking water as specified in 11th Schedule.

Sec. 19 of the Water (Prevention and Control of the Pollution) Act, 1974 speaks about the powers of the state government to restrict the application of the Act to certain areas.

Section 19 (1) says "Power of state Government to restrict the application of the Act to certain areas - (1) Notwithstanding anything contained in this Act, if
the State Government, after consultation with, or on the recommendation of the State Board, is of opinion that the provisions of this Act need not apply to the entire state, it may, by notification in the official gazette, restrict the application of this Act to such area or such areas as may be declared therein as water pollution, prevention and control area or areas and thereupon the provisions of this Act shall apply only to such area or areas”.

This section may be revised to make a role for Panchayats in the application of this Act as they have been allocated drinking water as a subject in their domain. This section may be recast as:

Section 19 (1) Notwithstanding anything contained in this Act, if the State Government, after consultation with, or on the recommendation of the State Board and the Panchayats of the area is of the opinion that the provisions of this Act need not apply to the entire state, it may by notification in the official Gazette restrict the application of this Act.

5. Environment Protection Act 1986

In the Environment Protection Act, 1986 some changes are warranted in consonance with the requirement for giving the Panchayats their functional role in the maintenance of community assets mandated by Schedule 11, entry 29 of the Constitution.

Section 23 of this Act which deals with the powers to delegate may be suitably revised to include the Panchayats as one of the bodies to whom such delegation may be made.

Section 23 reads as follows: Powers to delegate - Without prejudice to the provisions of sub-section (3), the Central Government may, by notification in the official Gazette, delegate, subject to such conditions and limitations as may be specified in the notifications, such of its powers and functions under this Act [except power to constitute an authority under sub-section (3) of section 3 and to
make rules under-section 25] as it may deem necessary or expedient, to any officer, state government or authority. This section may be recast, so that powers are delegated to Panchayats as:

Sec. 23 Powers to delegate - Without prejudice to the provisions of subsection (3), the Central Government may, by notification in the official Gazette, delegate subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act [except the power to constitute as authority under sub-section (3) of section 3 and to make rules under Section 25] as it may deem necessary or expedient, to any officer, State Government, authority or local governments including the Panchayats.

6. The Environment (Protection) Rules, 1986

Rule 12 of the Environment (Protection) Rules, 1986 refers to the furnishing of information to the authorities and agencies in certain cases.

Rule 12 (iii) says - where the discharge of environment pollutant in excess of the prescribed standard occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person in charge of the place at which such discharge occurs or is apprehended to occur shall forthwith intimate the fact of such occurrence or apprehension of such occurrence to all the following authorities or agencies, namely: (iii) The statutory authorities or agencies specified in column 3 in relation to places mentioned in column 2 against thereof [Schedule V].

It is suggested that this rule may be revised so the Panchayats of the area where discharge of environmental pollutant in excess of the prescribed standard occurs or is apprehended to occur due to any accident or other unforeseen act should also be informed forthwith the fact of such occurrence by the person in charge of the place at which such discharge occurs.
Rule 4 of these rules provide for the Competent Authorities including six types of authorities under it.

'Rule 4 (6) is reproduced below:

Rule 4. Competent Authorities

Clause (6): District Level Committee (DLC). There shall be a district level biotechnology committee (DLC) in the districts wherever necessary under the District Collectors to monitor the safety regulations in installations engaged in the use of genetically modified organisms, hazardous microorganisms and its applications in the environment.

The District Level Committee or any other persons authorised in this behalf shall visit the installation engaged in activity involving genetically engineered organisms, hazardous microorganisms, formulate information chart, and find out hazards and rules associated with each of these installations and coordinate activities with a view to meeting any emergency. They shall also prepare an offsite emergency plan. The District Level Committee shall regularly submit its report to the State Biotechnology Co-ordination Committee/Genetic Engineering Approval Committee.

The District Level Committee shall comprise of:

(i) District Collector - Chairman

(ii) Factory Inspector - Member.

(iii) A representative of the Pollution control Board - Member

(iv) Chief Medical Officer - Member (Convener)

(iv) District Agricultural Officer - Member

(vi) A representative of the Public Health Engineering Department Member
(vii) District Microbiologist - Member

(viii) Commissioner, Municipal Corporation - Member.

Rule 6 may be suitably revised so that the District Level Committee (DLC) is composed of Chairman, Zilla Panchayat as the Chairman of the DLC in place of District Collector, since he is an elected representative at the district level of the Panchayats and Panchayats have been vested with the powers for maintenance of community assets as per entry 29 of Schedule 11 of the Constitution.

8. The Protection of Plant Varieties and Farmers' Right Act, 2001

This is an important legislation pertaining to the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

Some of the provisions which may require modifications to include the role of local governments (Panchayats) as per mandate of Schedule 11 which includes maintenance of community assets and agriculture under functional domain of these institutions:

Sec. 3 (5) (b) - The Central Government shall, by notification in the official gazette, establish an authority to be known as the protection of Plant varieties and Farmers Right Authority for the purposes of this Act.

The members of the Authority to be appointed by the Central Government shall be as follow namely: - clauses (i) to (xiv). A new clause may be added, (xv) two representatives of Panchayat Raj Institutions at the district level.

Sec. 41 may also be revised.

Sec. 41 says - Rights of communities (1) Any person, group of persons (whether actively engaged in farming or not) or any government on non-governmental organisation may, on behalf of any village or local community in India, file in any centre notified, with the previous approval of the Central
Government by the Authority in the official gazette, any claim attributable to the contribution of the people of that village or local community, as the case may be, in the evolution of any variety for the purpose of staking a claim on behalf of such village or community.

Sec, 41 may be revised as (1) Any person, groups of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation and the panchayat of the local area may, on behalf of any village or local community, file in any centre notified, with the previous approval of the Central Government by the Authority in the official gazette, any claim attributable to the contribution of the people of that village or local community, as the case may be, in the evolution of any variety for the purpose of staking a claim on behalf of such village or community.

9. The Registration of Births and Deaths Act, 1969

Since Social welfare is included as per entry 26 in the Eleventh Schedule of the Indian Constitution and registration of births and deaths is an activity concerning social welfare, the legislation on this requires some more role for panchayats to reflect their functional domain.

Sec. 27 speaks about delegation of powers.

Sec. 27 Delegation of power – The State Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act (except the power to make rules under section 30) or the rules made there under shall, subject to such, conditions, if any, as may be specified in the direction may be exercisable by such officer or authority subordinate to the state government as may be specified in the direction.

This section may be revised and the state government given power to delegate its power to Panchayats in addition to any officer or authority.
10. The Cattle Trespass Act, 1871

Sec. 31 of this Act may require an amendment, in this Act, relating to trespass by cattle since Animal Husbandry etc is laid down in the functional domain of the Panchayats as per Schedule 11.

Sec. 31 speaks as under:

Sec. 31. Powers of State Government to transfer certain functions to local authority – The State Government may from time to time by notification in the official gazette-

(a) Transfer to any local authority within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the State Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority.

This section may be suitably amended to enable the state government to delegate the powers to Panchayats of the state in addition to other local authorities.

11. The Indian Fisheries Act, 1897

Fisheries are one of the subjects which fall under the functional domain of the Panchayats.

The Indian Fisheries Act, section 7 may be suitably revised.

Sec. 7 says – Arrest without warrant for offences under this Act – (1) Any police officer, or other person specially empowered by state government in this behalf, either by name, or as holding any office, for the time being, may, without any order from a Magistrate and without warrant, arrest any person who committed in his view any offence punishable under this Act.

This section may be revised to substitute "Panchayats in place of "any other person" empowered by State Government in this behalf."
12. The Juvenile Justice (Care and Protection of Children) Act, 2000

Women and child development falls under the functional domain of Panchayats as per entry 25 of Schedule 11 of the Constitution. The Juvenile Justice (Care and Protection of Children) Act, 2000 deals with the responsibility of the state so that all the needs of the children are met and that their basic human rights are fully protected.

Sec. 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000 refers to the constitution of Child Welfare Committees.

Sec. 29 (2) says – The Committee shall consist of a chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

This sub section may be suitably amended to include in the Child Welfare Committees, as members, elected representatives from Zilla Panchayat, as this will improve the overseeing of child welfare measures under this Act by representatives of grassroots democratic institutions as mandated by 11th Schedule.


Sec. 4 of this Act deals with the prospecting or mining operations to be under license or lease.

Sec.4 (1) (3) says – Any state government may, after prior consultation with the Central Government and in accordance with the rule made under section 18, undertake prospecting or mining operations with respect to any minerals specified in the First Schedule in any area within that state which is not already held under any prospecting license or mining lease.

This section must be suitably revised so that it is obligatory for the state Government to consult the Panchayat elected representatives of the area in which any prospecting or mining operations are undertaken. Panchayats have been
entrusted with maintenance of community assets as per Schedule 11 of the Constitution and mineral resources are local natural resources of an area over which Panchayats ought to have necessary control in public interest.

Similarly the provision in Sec. 40 of this Act which refers to recommendation of termination of prospecting license or mining lease by the Central government, in consultation with the State Government when it is of the opinion that this is expedient in interest of environment and public health to do so, may be suitably amended so that the Central Government has to mandatorily regard the opinion of the Panchayats of the area that whether having regard to environmental standards and public safety, it is expedient to terminate prospecting license or mining lease for any mineral in that area.

3.11: THE KARNATAKA PANCHAYAT RAJ ACT 1993

State of Karnataka was the first state to bring the panchayat Raj legislation in conformity with the constitutional (73rd Amendment) Act 1992 & to hold elections to the panchayat under the new Act 1993. The Karnataka panchayat Raj Act 1993 received the assent of the Governor on 30th April 1993. In the new Act of 1993 the basic features of panchayat Raj as mandated in the 73rd constitutional Amendment Act 1992 have also been incorporated.

The summary of the main features of panchayat Raj Act 1993 of Karnataka are as follows:

a. Establishment of three tier panchayat Raj institutions

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18 Is located in the western part of Deccan peninsular region of India. The state is bounded by Maharstra & GAO states in the north & northwest by the Arabian Sea in the west. Kerala & Tamilnadu states in the south & by the state of Andhra Pradesh in the east. The state extends to about 750 km from north to south & about 400 km from east to west with an area of 1,91,791 sq.km. According to 2001 census state has a population of 52,877,615 with 26,856,343 males & 25,877,615 females.


20 Statement of objects & reasons of the Karnataka panchayat Raj Act 1993, also see constitution of India, Art 243B
b. Constitution of a gram sabha

c. Reservation of seats for SC, ST, BCs & women.

d. Reservation of offices of chairpersons of panchayat bodies for SC, ST, BCs & women

e. Constitution of the state finance commission once in every five years to review the financial position of panchayats & to make suitable recommendations to the state on the distribution of funds between the state & local bodies.

f. Constitution of the election commission.

g. The term of office of Adhyaksha, Upadhyaksha, & every member of standing committee of Taluk panchayat & Zilla Panchayat shall be twenty months.

h. To provide for the officers who preside over the first meeting of Gram, Taluk & Zilla panchayats for conducting elections to the offices of Adhyaksha & Upadhyaksha should also preside over the subsequent meeting convened for filling up vacancies in the offices of Adhyaksha & Upadhyaksha.

i. To enable the Upadhyaksha of Gram panchayat, Taluk panchayat, & Zilla panchayat to exercise the powers of Adhyaksha when the office of the Adhyaksha is vacant.

j. Constitution of the District planning committee in each district.

The Karnataka panchayat Raj Act 1993 establishes a three-tier panchayat Raj system in the state with elected bodies at Gram, Taluk and district level for greater participation of the people & for more effective implementation of rural development programmes.

To administer development, the entire development administration is divided into three-tier legal structure. They are Gram panchayat, Taluk panchayat,
& Zilla panchayat. These entire PRIs are operating in the area of a district. Each of which is to carry out its defined functions in its area of jurisdiction. All the three units are independent in certain respects & interdependent in certain aspects.

Gram panchayat will function at the lowest-grass root level & the Taluk-Block panchayat will function at the intermediate level & Zilla panchayat will function at the district level. Roles & responsibilities, power & duties for each level has been clearly demarcated & they have to function as per the powers conferred upon them. Development activities have to be carried out by lower level units & planning, co-ordination & suspension activities have to be carried out by the district level.

The three-tier panchayat Raj system is based on the population as ascertained at the last preceding census of which the figures have been published.

3.11.1: GRAM PANCHAYAT

Under the Karnataka panchayat Raj Act 1993, 5645 gram panchayats have been established & on an average, each gram panchayat has a population of 5300. Elections to 5645 Gram panchayats were held in December 1993. They consists of elected members each representing about 400 people. The Gram panchayats to be headed by Adhyaksha & upadhyaksha elected from among the members.

The Gram panchayats consisted of three standing committees, namely,

1. Production Committee,
2. Social Justice Committee,
3. Amenities Committee.

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30 A Gram panchayat is constituted for a population not less than 5000 & not more than 7000 area or group of villages will be considered as a panchayat area, & there will be one member for every 400. sec, 4. KPR Act 1993.
31 1991 census.
32 Sec, 45, KPR Act 1993.
33 Sec 61, KPR Act 1993.
Each committee consists of not less than three & not less more than five members including the chairman. The Adhyaksha as ex-officio chairman & also member of production committee & Amenities committee. The social justice committee shall consist of at least one woman as a member & another belonging to the scheduled caste or scheduled tribes. The committees are competent to co-opt members.

3.11.2: CONCEPTUALISING GRAM SABHA

The sec, 3 of the Karnataka panchayat Raj Act 1993, makes it mandatory for Gram panchayat to convene a Gram sabha in every village at least twice in a year. It is a body consisting of persons registered in the electoral rolls relating to village panchayats within the area of Gram panchayat. It is a forum wherein annual statement of accounts, report of administration & the development works undertaken by the Gram panchayats are reviewed. It also considers the development programmes proposed by the Gram panchayats for the current year. It is responsible for identifying beneficiaries under different poverty alleviation & development programmes. The Taluk/ Zilla panchayats have to take into account the recommendations of the Gram sabha during the process of preparation of action plans.

Gram sabha or people's forum has always been an integral part of the concept of a village government or gram panchayat. Decision-making of the gram panchayat was only valid if the gram sabha endorsed it. Therefore, the gram sabha was an institution of direct democracy rather than representative democracy.

34 Sec, 61(2) KPR Act 1993.
35 Art 243 A, of the constitution of India defines gram sabha as a body consisting of persons registered in the electoral rolls related to a village within the area of the panchayat at the village level.
36 Where each individual has the opportunity, guaranteed by the constitution, to play a role in deciding his/her own destiny. Hence, if the participation is high, it is indicative that the level of democratic governance is high.
The concept of Gram sabha has not been grasped clearly, right from the policy makers to the villagers. A gram sabha needs to generate a feeling of belonging. The real challenge now is to ‘reconnect’ the sabha, by communicating clearly its function & purpose both at the individual & public levels.

3.11.3: TALUK PANCHAYAT

A taluk panchayat has been constituted for every revenue taluk as the intermediate level in the panchayat Raj system. It consists of elected members each one representing 10,000 population or part thereof. However, Taluks having a population of not exceeding one lakh have eleven members. Under the new Act 1993, Elections to all the 175 Taluk panchayats in the state for the first time were held during 13th -18th march 1995, on party basis. The office of Adhyaksha & upadhyaksha of Taluk panchayats have also been reserved for different categories.

3.11.4: ZILLA PANCHAYAT

A Zilla panchayat is consisting of elected members at the rate of one member for every 40,000 populations & part thereof. Elections to all the Zilla panchayats were held during March 1995 on party basis.

The members of these bodies are to be elected (non-party basis at the gram panchayat level & on party basis at the other levels) under the supervision of the state election commission which is to be appointed as per law. At all levels of decentralised governments, there is reservation of seats for SCs in proportion to their population but not less than 18 per cent of the seats, & a third of the seats are to be reserved for backward classes. Also a third of the total number of seats from all categories is reserved for women. MPs MLAs & MLCs will be ex-officio members in both Zilla & taluk panchayats with voting rights except for the

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37 One member for every 30,000 population in chikmagaluru & uttar kannada districts & one member for every 18000 populations in the district of kodagu.
38 There were 20 zilla panchayats.
election of the Adhyakshas—presidents. The Adhyakshas of all the Panchayat Raj bodies are to be elected by the elected members. Reservations of these positions are provided on the same scale as for the elected members.

The main feature of the Karnataka panchayat Raj Act 1993 is that in all category 33% reservations have been made in favour of women. Sec 206 of KPR, Act, 1993 has made a provision of an annual grant for each Gram panchayat.

These bodies will not only function as local self-government units performing civic functions but will also be working as development initiating agencies. Sec 206 of KPR, Act, 1993 has made a provision of an annual grant for each Gram panchayat. They would have finances devolved for these purposes by the state & their financial requirements will be reviewed by the quinquennially appointed state finance commission provided for in the panchayat Raj Act 1993.

3.12: STATE ENACTMENTS & RULES FOR THE GOVERNANCE OF PANCHAYAT RAJ INSTITUTIONS

The state of Karnataka has enacted legislations relating to panchayats followed by rules & their Amended versions by the Government to build the legal regime for the panchayat Raj system within the Constitutional framework. This will get us legislative evolution of panchayat Raj institutions in state of Karnataka. They are enlisted as below.

GENERAL DIVISION

1. Karnataka panchayat Raj Act, 1993
      ii. K.P.R. (2nd Amendment) ACT, 1996

39 This grant shall be utilized for meeting the electricity charge, maintenance of water supply schemes, sanitation & other welfare activities. No part of this grant shall be spent toward establishment expenses not related to afore said purposes. There were many demands from all over the state to increase the amount of grant. Obviously the present government has assured to increase the grant to Rs 10 lakhs.
40 73rd constitutional (Amendment) Act, 1992.
2. Karnataka local authorities (prohibition of Defection) Act, 1987\(^{41}\).
   i. Karnataka local Authorities (prohibition of Defection) (Amendment) Act, 1995
   ii. Karnataka local Authorities (prohibition of Defection) (2nd Amendment) Act, 1995

   i. Karnataka panchayat Raj (Conduct of Election) (Amendment) Rules, 1994,
   ii. Karnataka panchayat Raj (Conduct of Election) (Amendment) Rules, 1995
   iii. Karnataka panchayat Raj (Conduct of Election) (2nd Amendment) Rules, 1995

   i. Karnataka panchayat Raj (Election of Members & Chairman of the District planning committee) (Amendment) Rules, 1998 [8.5.1998].


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\(^{41}\) An Act enacted in consequence of Zilla parishads, Taluk panchayat samitis, Mandal panchayat & Nyaya panchayats Act, 1983 for prohibiting defection. However, this Act was not applicable to members of Gram panchayat who are supposed to have been elected on non party lines.


12. Karnataka panchayat Raj (Correspondence) Rules, 1994


GRAM PANCHAYAT DIVISION


18. Karnataka panchayat Raj (Claims of Property by or against Gram panchayats) Rules, 1994


   iv. Karnataka panchayat Raj (Election of Adhyaksha & Upadhyaksha of Gram panchayat) (Amendment) Rules, 2005[d. 01.6.2006]


   i) Karnataka panchayat Raj (Gram panchayats Taxes & fees) (Amendment) Rules, 1997 [d.8.10.1997]


TALUK PANCHAYAT DIVISION

33. Karnataka panchayat Raj Taluk panchayats (Finance & accounts) Rules, 1996
   i. Karnataka panchayat Raj Taluk panchayats (Finance & accounts) (Amendments) Rules, 2006. [25.5.2006]


37. Karnataka panchayat Raj (Maintenance of Jamabandhi in Taluk panchayats) Rules, 2005


ZILLA PANCHAYAT DIVISION


42. Karnataka Zilla panchayat Raj (Business) Rules, 1998
43. Karnataka Zilla panchayats (Finance & accounts) Rules, 1996.  
   i. Karnataka Zilla panchayats (Finance & accounts)(Amendment) Rules, 2006 [25.5.2006]

**TALUK PANCHAYAT & ZILLA PANCHAYAT DIVISION**

44. Karnataka panchayat Raj (Limit of Expenses of Election by the contesting candidates in Zilla panchayat & Taluk panchayat) order, 2005


3.13: JUDICIAL REVIEW & PANCHAYAT LAWS

Article 13 of the constitution of India, empowers the Supreme Court & High Courts to review the constitutionality of legislations enacted either by the union parliament or state legislatures. Judicial review has been considered as the basic structure of the constitution. 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.

As the term of elected Gram panchayat representatives came to an end on 10th March 1999, on the basis of the above reasons & promulgation of ordinance for amending sections 4 & 5 of the Karnataka panchayat Raj Act 1993 to
restructure the Gram panchayat constituencies & to increase number of electorates under each constituencies the state government decided to nominate the sitting members, presidents & vice presidents of the Gram panchayats in the state. It therefore issued the order on 3\textsuperscript{rd} March 1999 nominating the existing members to their respective posts in the administrative committee. It was to facilitate them to continue to hold office until fresh elections are held or until the government issues further orders.\textsuperscript{42}

The decision of the government was questioned through public interest litigation.\textsuperscript{43} The High court by quashing the orders of the government held that the panchayats are constitutional institutions & not the creatures of state legislatures. The state has no power to extend the term of Gram panchayat which is fixed as five years in the constitution itself, even though the state has the power to dissolve panchayats prematurely. The court further issued the order to the election commission to hold the elections within six weeks from the date of order. Accordingly, the elections were conducted on 23\textsuperscript{rd} February 2000 to Gram panchayats & on 6\textsuperscript{th} June 2000 to all Taluk panchayats & Zilla panchayats of the state.

3.15: A NEW DIMENSION IN FEDERALISTIC FEATURES

In a federal structure, there shall be division of powers between the union government & state governments. Likewise, there shall be sharing of resources between the two levels of governments. Now because of the 73\textsuperscript{rd} constitutional Amendment a third level institution has come into being as institution of self governance with distinct & categorical political, financial & administrative powers to administer development & social justice. Thus, the concept of federalism brings in the interrelationship between union, state & local self governing institutions.

Decision making in Indian power process has been based on the representations made by the representatives of the people both in the union of

\textsuperscript{42} Govt order No RDP 50 ZPS: 97 dated 3\textsuperscript{rd} March 1999.
\textsuperscript{43} Prof B.K.Chandrashekar & others V state of Karnataka.ILR 1999, KAR 2513.
India’s parliament (MPs) & state legislatures (MLAs). In the representative democracy Indian population is represented by 4700 representatives in union parliament & state legislature. The ‘First past the post’ election system adopted for representative democracy is also not truly representative to represent the millions of people.

Now the concept of representation has been changed to direct participation of people in the governing process & thereby an institutional mechanism, namely, ‘Gram Sabha’ was created to enable the people to participate in the development process. Gram Sabha is the basic institutions created for the benefit of the people to participate & administer development, to make the people to associate themselves with the community to discuss about the problems of the community & to find out solutions to the problems. Gram sabha will nurture democratic principles in the community & giving meaning to the concept ‘Empowerment of people’.

Although provisions\(^4\) were there in the constitution of India for the creation of panchayat Raj institutions & their organisation, they have not been properly implemented by the states for many years. Though the provision is not an enforceable in the court of law, it does manifest constitutional recognition of the village’s panchayats as units of self-government. True significance of the Art 40 lies in its mandate that panchayat should be endowed with such powers as units of self-government. The emphasis of this constitutional requirement is to strengthen panchayat Raj institutions structurally & operationally to function as an effective institution of grass root democracy. However, the past experience in regard to the functioning of the panchayat Raj institution established & regulated by the state legislations in different states have revealed that they have not been allowed generally speaking of function in consonance with the constitutional spirit of self government.\(^5\)

\(^4\) Art 40 of the constitution of India.