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State Inaction Through Law - a Critique of the Constitution (Seventy Third) Amendment Act, 1992.

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Introduction

Absorption of the populace in the activities of the state is an essential pre-requisite for development. Such absorption must necessarily result in enthusiastic involvement of the populace in the policy formulation and implementation of the state. Unfortunately, the centralised political structure in the country, has resulted in public participation in governance being another visionary goal, unrealised.

An increase in the industrial production, has brought about growth, but the question remains as to who has benefitted? The cumulative forces of growth which may be considered as the invisible hand in the economy of the country, have done nothing more than make the rich richer and the poor poorer. Only a truly popular participation can emancipate the poor.

One needs to examine the action taken by the state, in bringing this popular participation to the public. For this purpose one should concentrate on the Seventy Third Amendment to the Constitution of India.

Panchayati Raj - Origin

Against the popular belief, the concept of democratic decentralisation goes beyond the thoughts of great leaders like Gandhi and M.N. Roy. The roots of the institution of Panchayati Raj can be found in ancient India. The elixir on which community life was conglomerated, was the institution of the Panchayati Raj, in its traditional and coarse form.

In ancient India, traditional tribal society developed upon the participation of the entire community in all its social processes. The tribal chief recognised all customary laws. With the formation of guilds of merchants, whose laws were respected by the king, the commercial laws developed in the hands of the people. It can thus be stated that popular participation originated in ancient India.

Panchayati Raj - Meaning

At this juncture, it is necessary to explain what would really amount to panchayati raj, which is often also called democratic decentralisation. In simple terms it may be considered as institutionalisation at the village levels, ensuring popular participation. It may also be

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called grassroot democracy, involving decentralisation of power in the hands of the people, so as to achieve a rule from below, in contrast with rule from above.

Panchayati Raj - attempts after independence

The British left behind in India a culture of centralisation, where they had destroyed all the local institutions prevalent in ancient and medieval India. In its place they had established an administration, where the rule of law was imposed on the public.

An opportunity was available to the framers of the Constitution of India to rectify this defect by the creation of appropriate Panchayati Raj institutions at the lower levels, whereby law could once again be created by true consensus, rather than be imposed from above. Clearly such opportunity was wasted as is evident by the structure of centralisation of power reflected in the VII Schedule to the Constitution of India.

A number of commissions, like the Balwantray Mehta Commission in 1958 and the Ashok Mehta committee in 1978, clearly advocated the need for the establishment of Panchayati Raj institutions. The former clearly noted that the Community Development Programmes were failing, due to the lack of popular participation. The commission clearly recommended the creation of local bodies and the granting to them of adequate power and appropriate finance.

Following the 1958 recommendations, a number of states moved in for a three tier system, where such bodies were created. The lowest level was the village panchayat, democratically elected. At the second tier, the Panchayat Samiti was created and at the third level the Zila Parishad. In reality no power was decentralised, and this gave the people an impression that the panchayat was a 'God that failed.'

The state legislatures, due to their own inaction merely created an institution, which had no real powers. In fact the institution never was independent in its finances. The Ashok Mehta Committee recommended that the defect lay in the structure, and it was necessary to have a two tier structure instead of a three tiered one. It further recommended that the Zila Parishad should take over the developmental functions of the state. However the same was not implemented, and the panchayats continued to be as powerless as before; even if they had a project it could not be implemented, as they did not have their own independent finances.

The Constitution (Seventy Third) Amendment Act, 1992¹

The powerful lobby for the creation of proper panchayats led to the passage of the Amendment Act, wherein the Constitution was amended to give the Panchayat a place in it.

The structure contemplated under the Amendment Act is a three tier structure, that is:

- a) The panchayat at the village level

1 Received the assent of the President on 20 April 1993 and came into force with effect from 24-4-1994 vide S.O. 267(E), dated 24-4-1993.

- b) The panchayat at the intermediate level
- c) The panchayat at the district level

The members of the panchayat may be elected by the Gram Sabha, which is the body of all eligible voters in the constituencies. At the district level, the Legislature of the state may provide for representative members, which may even include the local M.L.A.

Article 243G and 243H read with the Eleventh Schedule explain the powers, authority and responsibilities on the panchayat. The amendment fails in granting powers to the panchayat, but it does however provide that the state may by law, endow the panchayat with such powers and authorities as may be necessary to enable it to function as an institution of self government. The devolution of powers would be subject to conditions which may be specified by law, relating to the preparation and implementation of schemes for economic development and social justice.

Further the State Government may provide by legislation, the authority to the panchayat to collect, levy and appropriate taxes, and may also provide additional resources for the panchayat under Article 243H.

On electoral matters, a separate Election Commission is created at the state levels for the supervision of the elections. There is also a bar on judicial review in relation to electoral matters.

A Finance Commission would also be appointed to review the financial position of the panchayats and there are also certain provisions pertaining to audit and the maintenance of accounts.

Critique

What one sees is another classic example of state inaction through law. Here is another dummy legislation, which in reality seems to have very little meaning. The lack of political motivation in the policy of decentralisation has been reflected by the Act. This is evident from a number of points which are noted in the legislation.

The Amendment Act has simply abandoned the issue and left it in the hands of the state governments. The technique may be easily called one of passing the buck. It has vested in the state legislatures the power to pass legislation if they deem fit, devolving power on the panchayat. It is difficult to see why the same required a Constitution amendment as the power to make certain legislations is anyway there with the state, by virtue of Article 246 read with Lists II and III of the VII Schedule.

The Amendment Act, in its framework, in no way embodies the concept of decentralisation. Only the power that is necessary for enabling the panchayats to functions as units of self government may be devolved. It does not imply a complete decentralisation. If one is to allow an institution as a unit of self government, then all powers have to be devolved to the institution, else it would be subject to central control.

Further, the fact remains that all the legislatures have been given the power to enact legislations and obviously the same is subject to the provisions of the Constitution. This

would imply that the legislation would be subject to repeal and amendment. In such a situation, the panchayats may be aptly described as 'Now you see them, now you don't.'

In addition to the above the legislature is also competent to impose conditions in matters relating to economic development and social justice. The same makes the complete exercise a farce, as all the entries in the Eleventh Schedule, which is the schedule enlisting matters which the panchayat may deal with, relate either to economic development or social justice.

Even the financial power is not granted to the panchayat and has to be given by the legislature.

Further a court is barred from examining certain electoral matters. The very logic of such a provision fails to register, especially when judicial review has been authoritatively declared as an integral part of the basic structure of the Constitution.

The larger question to be addressed, is as to the very efficacy of the system, even if it is allowed to function within the democratic structure. Democracy in India has failed. If political parties are allowed to participate in these panchayat elections, then the very idea of democracy goes. Once again the politicians will visit the people every five years canvassing for votes. In between these five years, the only place the face of the politician will be visible, would be in the newspapers. The concept of having representatives appointed by the government as part of the panchayat would merely bring additional trouble.