



PANCHAYATIRAJ SYSTEM IN HARYANA: A JUDICIAL AND LEGISLATIVE APPROACH

Farhana

Research Scholar, M.D.University, Rohtak
farhana0108@gmail.com

Before 1947, there were certain local bodies with elected representatives which were functioning in the country. Such local bodies did not, however, have constitutional status. They owed their existence, constitution and functioning to statutes and had been subject to the overall control of provincial governments. But with the Passage of time, these local bodies were given constitutional status by adding Part IX to the Constitution. Though there is already reflection in Chapter-IV of the Constitution which relates to Directive Principles of State Policy where there is mention of organisation of village Panchayat. It is laid down in the Constitution that “the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government.”¹

After independence various Legislations have been passed from time to time by State Legislatures establishing a three tier Panchayat system by 1980's. It was felt desirable that local bodies be given constitutional status and the basic norms regarding the establishment and administration of the three-tier Panchayati Raj Institution be provided under the Constitution. Hence, realising the need for giving more power to the local bodies i.e Gram Panchayat, Panchayat Samiti and Zila Parishad the 73rd Amendment was incorporated in the Constitution by which Part IX was inserted with effect from 24th April 1993.

CONSTITUTIONAL STATUS TO PANCHAYATI RAJ SYSTEM

In token of the 73rd Amendment, The Haryana Panchayati Raj Act, 1994 was enacted to bring the then existing law governing Panchayat in the State in tune with the Constitution. It provides, a three-tier Panchayat system at the village level and Panchayat Samiti at Block level and Zila Parishad at District level by virtue of the above Amendment.² Chapter IV of the Constitution which deals with Directive Principles of State Policy gives direction to the State to take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government.

To effectuate such obligation of the State, Constitution authorised (even prior to the 73rd Amendment) State Legislatures under Article 246(3) read with Entry 5 of List II to make laws with respect to Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. Laws have been made from time to time by State Legislatures establishing a three tier Panchayat system by 1980's. It was felt desirable that local bodies be given constitutional status and the basic norms regarding the establishment and administration of the three-tier Panchayati Raj Institution be provided under the Constitution. In view of the above the Government enacted the 73rd Amendment of the Constitution by which Part IX was inserted.

In token of the instant Amendment it is stipulated that there shall be constituted in every State, Panchayats at the village, intermediate and district level (hereinafter collectively referred to as Panchayats) in accordance with provisions of Part IX.³ The Composition of Panchayats is to be determined by the Legislature of the concerned State by law subject of course to various stipulations contained in Part IX of the Constitution; such as reservation of seats in favour of scheduled caste and Scheduled Tribes etc. the duration of Panchayat is fixed

¹ Article 40 of the Constitution

² 73rd Amendment Act 1993

³ Article 243 B(1)



for a maximum of five years subject to dissolution in accordance with law dealing with the subject. There is a further stipulation that election to constitute a Panchayat be completed before the expiry of its tenure.⁴

The broad control of the powers and functions of Panchayats are also spelt out in Part IX of the Constitution. Such powers and responsibilities are to be structured by the legislation of the State. The establishment of an autonomous constitutional body to superintend the election process to the Panchayat is also stipulated in the Constitution.⁵The Haryana Panchayati Raj Act, 1994 was enacted to bring the then existing law governing Panchayat in the State in tune with the Constitution as amended by the 73rd Amendment.

PANCHAYATI RAJ SYSTEM UNDER HARYANA PANCHAYATI RAJ ACT 1994

The Haryana Panchayati Raj Act 1994 stipulates that Panchayat areas shall be divided into wards.⁶Likewise, Haryana Panchayati Raj Act 1994 further declares that every person entitled to be registered as voter in the relevant part of the electoral rolls of the Assembly is entitled to be registered as a voter for the purpose of Panchayat elections.⁷

The Act further mandates that person suffering from any one of the disqualifications mentioned in Section 175 are neither eligible to contest the election to any one of the offices under the Act nor can they continue in office if they incur any one of the disqualifications, after having been elected. The categories so specified runs into a long list, such as, convicts of certain categories of offences, adjudicated insolvent, people of unsound mind, people who hold any office of profit under any one of the three categories of Panchayats etc.

By the Impugned Act, five more categories of persons are rendered incapable of contesting elections for any one of the elected offices under the Act. These categories are: (i) person against whom charges are framed in criminal cases for offences punishable with imprisonment for not less than 10 years, (ii) persons who fail to pay arrears, if any, owed by them to either a Primary Agricultural Cooperative Society or District Central Cooperative Bank or District Primary Agricultural Rural Development Bank, (iii) persons who have arrears of electricity bills, (iv) persons who do not possess the specified educational qualification and lastly (v) persons not having a functional toilet at their place of residence.⁸

The Act further stipulates that “No person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such”, if he falls within the ambit of any of the clauses of section 175 which reads as follows:

Disqualifications.-⁹ (1) No person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of Panchayat Samiti or Zila Parishad or continue as such who-

(a) Has, whether before or after the commencement of this Act, been convicted -

(i) of an offence under the Protection of Civil Rights Act, 1955 (Act 22 of 1955), unless a period of 5 years, or such lesser period as the Government may allow in any particular case, has elapsed since his conviction; or

(ii) of any other offence and been sentenced to imprisonment for not less than 6 months, unless a period of 5 years, or such lesser period as the Government may allow in any particular case, has elapsed since his release;

or (aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than 10 years;

(b) has been adjudged by a competent court to be of unsound mind; or

(c) has been adjudicated an insolvent and has not obtained his discharge; or

(d) has been removed from any office held by him in a Gram Panchayat, Panchayat Samiti or Zila Parishad under any provision of this Act or in a Gram Panchayat, Panchayat Samiti or Zila Parishad before the

⁴ Article 243 E

⁵ Article 243 K

⁶ Section 162 of Haryana Panchayati Raj Act

⁷ Section 165 of the Act

⁸ Section 175 of the Act

⁹ Section 175 of the Act



commencement of this Act under the Punjab Gram Panchayat Act, 1952 and Punjab Panchayat Samiti Act, 1961, and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the Government notified in the Official Gazette been relieved from the disqualifications arising on account of such removal from office; or

(e) has been disqualified from holding office under any provision of this act and the period for which he was so disqualified has not elapsed; or

(f) hold any salaried office or office of profit in any Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(g) has directly or indirectly, by himself or his partner any share or interest in any work done by order of the Gram Panchayat, Panchayat Samiti or Zila Parishad;

(h) has directly or indirectly, by himself or, his partner share or interest in any transaction of money advanced or borrowed from any officer or servant or any Gram Panchayat; or

(i) fails to pay any arrears of any kind due by him to the Gram Panchayat, Panchayat Samiti or Zila Parishad or any Gram Panchayat, Panchayat Samiti or Zilla Parishad subordinate thereto or any some recoverable from him in accordance with the Chapters and provisions of this Act, within three months after a special notice in accordance with the rules made in this behalf has been served upon him;

(j) is servant of Government or a servant of any Local Authority; or

(k) has voluntarily acquired the citizenship of a Foreign State or is under any acknowledgement of allegiance or adherence to a Foreign State; or

(l) is disqualified under any other provision of this Act and the period for which he was so disqualified has not elapsed; or

(m) is a tenant or lessee holding a lease under the Gram Panchayat, Panchayat Samiti or Zila Parishad or is in arrears of rent of any lease or tenancy held under the Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(n) is or has been during the period of one year preceding the date of election, in unauthorised possession of land or other immovable property belonging to the Gram Panchayat, Panchayat Samiti or Zila Parishad; or

(o) being a Sarpanch or Panch or a member of a Panchayat Samiti or a Zila Parishad has cash in hand in excess of that permitted under the rules and does not deposit the same along with interest at the rate of twenty-one percent per year in pursuance of a general or special order of the prescribed authority within the time specified by it; or

(p) being a Sarpanch or Panch or a Chairman, Vice Chairman or Member, President or Vice President or member of Panchayat Samiti or Zila Parishad has in custody prescribed record and register and other property belonging to, or vested in, Gram Panchayat, Panchayat Samiti or Zila Parishad and does not handover the same in pursuance of a general or special order of the prescribed authority within the time specified in the order; or

(r) admits the claim against Gram Panchayat without proper authorisation in this regard;

(s) furnishes a false caste certificate at the time of filing nomination:

Provided that such disqualifications under clauses (r) and (s) shall be for a period of six years.

(t) fails to pay any arrears of any kind due to him to any Primary Agricultural Cooperative Society, District Central Co-operative Bank and District Primary Co-operative Agriculture Rural Development Bank; or

(u) fails to pay arrears of electricity bills;

(v) has not passed matriculation examination or its equivalent examination from any recognised institution/board:

Provided that in case of a woman candidate or a candidate belonging to Scheduled Caste, the minimum qualification shall be middle pass:

Provided further that in case of a woman candidate belonging to Scheduled Caste contesting election for the post of Panch, the minimum qualification shall be 5th pass; or

(w) fails to submit self declaration to the effect that he has a functional toilet at his place of residence.

JUDICIAL APPROACH VIS-A-VIS PANCHAYATI RAJ SYSTEM



The most important and latest case decided by the Hon'ble Supreme Court is of *Rajbala vs. State of Haryana*¹⁰ delivered by the Apex Court of the country affirmed the amendments made to Haryana Panchayati Raj Act 1994. The effect of the decision held in the above case will disentitle many peoples in the State incapacitated of their right to contest elections.

The imposition of educational qualification is one of the criteria prescribed by the legislation in compliance of this case and it extremely important to consider it with regard to the context it operates in. It has an unreasonable impact on the people in villages and may further the already existing stratification in the respective society. Its impact is also disproportionate when viewed in light of gender and caste. Its impact is specially amplified on women belonging to the class of SC and ST.¹¹

The statistics shows that the imposition of educational qualification as a criteria in the state will disable 68% of Scheduled Castes women, 41% of Scheduled Caste men and over 50% of all women in Haryana from contesting a panchayat election. The court acknowledged this empirical data. This kind of negative impact cannot bear any justification because it is unreasonable denying the people their rights to participate in a democracy. But the court is in concrete belief that this is necessary thing to do. The Court is convinced that education is absolutely necessary in the running of the Panchayat.¹² It believes that education "allows a person to differentiate between right from wrong."

Although the reasoning may be optimistic, the data paints a different picture altogether. Firstly, the Court does not attempt to define "education". It does not mention as to what kind of education is required to equip a person to be an efficient representative of the people. The Legislation did not prescribe the quality of education required for the persons fond of fighting election for the Panchayat. Therefore, it is the need here to clarify whether technical or moral education is an essential qualification for a candidate willing to contest election for the local self Govt. bodies. Accordingly, the Court was obligated to mention the impact of education on a person to be an efficient administrator. A person with wisdom can differentiate between right and wrong. What is so intrinsic to education till the matriculation or middle pass without which, a panchayat cannot be administered and village cannot be governed.

Secondly, the Court makes a problematic assumption that the prescribed educational qualification instills in a person, the necessary skill set. This is simply not true. The courts hopes of a candidate distinguishing right from wrong requires more than just education till the matriculation. It requires in my belief, from a candidate character, wisdom and experience.

It is pertinent to mention at this stage that educational qualification to contest for elections was not considered to be a valid criterion by the Constituent Assembly in its debates. For the court to deviate from the reasoning of the Constituent Assembly is no doubt a monumental feat, but the cost of this action, does not warrant the action in the first place.

Now, the serious question is, why should literacy be considered as the supreme achievement of men in our country for becoming a good legislature. It should not be made as the sole criterion for entrusting the governance of a country to a person. Because there are example of number of persons who were not happened to be much literate but they proved themselves as good administrators. The example of Ranjit Singh, Shivaji and the Great Akbar are quoted here. All these great personalities were not literate. But all of them were administering their States very well.

Historically, education has been a privilege accorded and afforded by the wealthy. The additional imposition of educational qualification deliberately ignores this historical context and hence more people are indisposed to exercise their freedom and right. The people belonging to the category of schedule caste and scheduled tribe are especially disadvantaged because of this. The presumptions position of the legislation reflects a glaring disconnect with the people of the State.

¹⁰ (2016) 1 SCC 463

¹¹ 2nd Amendment to the Rajasthan Panchayati Raj Act

¹² In re Rajbala Case



Therefore, to my wisdom the people who have to run the administration efficiently of the Panchayat, Panchayat Samiti and Zila Parishad shouldn't they all have to be educated to the same level. By making a distinction for people with regards to the necessary educational qualification, the state recognises that education has been a privilege accorded to the people and that different people will be able to access it till different levels. By virtue of being a privilege, it is not necessarily felt by all. Very often it is the poor and the downtrodden that cannot afford to be educated. It may be because of economical reasons or just plain simple social. This legislation disabled people from participating in the electoral process because they were not able to afford this privilege.

Another category of people who are adversely affected by the decision of the above case and subsequent legislation enacted by the Haryana State are the women. The impact of the society as it mostly stands in rural India, where education of girls is prioritised in limited households, the qualification of educational requirement is unflinchingly arbitrary, unreasonable and does not appeal to sound reason. It is not prudent or beneficial to hinder the development of a section of the society by imposing additional unreasonable and disconnected requirements as imposed by the decision of Rajbala Case.¹³

The Supreme Court in *People's Union for Civil Liberties & Another v. Union of India and Another*,¹⁴ considered the validity of the Representation of the People (Third Amendment) Act, 2002. By the said Amendment, a candidate contesting an election (to which the Representation of the People Act, 1951 applies) is required to furnish certain information at the time of filing of nomination. P.Venkatarama Reddy, J., delivered the opinion of the Court. The Supreme Court of India reiterated that Article 19(1)(a) includes the right of voters to have basic information about electoral candidates.

In a democracy, the will of the people is expressed in periodic elections. Availability of basic information about the candidates enables voters to make an informed decision and also paves the way for public debates on merits and demerits of candidates. This in turn goes a long way in promoting freedom of speech and expression, and also ensures the integrity of the electoral process in a democracy. Further, freedom of expression is not limited to oral or written expression, but also includes voting as a form of expression. Even though the right to vote itself may not be a fundamental right, the expression of opinion through the final act of casting a vote is part of the fundamental right of freedom of speech and expression.¹⁵

In *N.P. Ponnuswami v. Returning officer, Namakkal Constituency, Namakkal, Salem*,¹⁶ and *Jyoti Basu & Others vs Debi Ghosal & Others*,¹⁷ held that the "Right to Vote" if not a fundamental right is certainly a "Constitutional Right" and "it is not very accurate to describe it as a statutory right, pure and simple".

Following the PUCL case, one of us held in *Desiya Murpokku Dravida Kazhagam (DMDK) & Another v. Election Commission of India*¹⁸ that every citizen of this country has a constitutional right both to elect and also to be elected to any one of the legislative bodies created by the Constitution. It was a case dealing with allotment of election symbols and the right of a political party to secure "an election symbol on a permanent basis irrespective of its participation and performance judged by the vote share it commanded at any election."

In *Shyamdeo Prasad Singh v. Nawal Kishore Yadav*,¹⁹ a Bench of three learned Judges of the Supreme Court observed that Article 326 of the Constitution is founded on the doctrine of adult suffrage. It provides that every person who is a citizen of India and who is not less than 18 years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

¹³ (2016) 1 SCC 463

¹⁴ (2003) 4 SCC 399

¹⁵ Article 19(1)(a)

¹⁶ AIR 1952 SC 64

¹⁷ (1982) 1 SCC 691

¹⁸ (2012) 7 SCC 340

¹⁹ (2000) 8 SCC 46



In *Union of India v. Rakesh Kumar*,²⁰ a three judge bench of the Supreme Court held that the proviso to section 4(g) of the provisions of the Panchayats (extension to Scheduled Area) Act, 1996 containing exception to the norm of propositional representation and the exceptional treatment incorporated in Jharkhand Panchayat Raj Act, 2001[Sections 21(B), 40(B), 50(B)] providing 100% reservation in favour of Scheduled Tribes for Chairman's position in Panchayats located in Scheduled areas in Jharkhand is constitutionally permissible since Article 243-M (4)(b) expressly empowers Parliament to provide for 'exception and modifications' in the application of Part IX to Scheduled Areas.

The maximum reservation permissible upto only 50% as held in *Indra Sawhney v. Union of India*,²¹ and *M.R. Balaji v. State of Mysore*,²² is applicable only to reservations enabled by Article 16(4). Therefore, the aggregate reservation amounting to 80% in Scheduled Areas is not unconstitutional on the ground of unreasonable restriction on the rights of political participation of persons belonging to general category. The exercise of electoral franchise is an essential component of a liberal democracy. Such rights do not have the status of fundamental rights and are instead legal rights which are controlled through legislative means. There is no inherent right to contest elections since there are explicit legislative control over it.

DISQUALIFICATIONS LAID DOWN IN THE CONSTITUTION FOR CONTESTING ELECTION TO THE PANCHAYAT

Our Constitution therefore, clearly indicates that-²³

(1) A person shall be disqualified for being chosen as, and for being a member of a Panchayat- if he 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: Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years; if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises 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 and in such manner as the Legislature of a State may, by law, provide.

It appears from the above, that any person who is disqualified by or under any law for the time being in force for the purposes of elections to the Legislatures of the State concerned is also disqualified for being a member of Panchayat. In other words qualifications and disqualifications relevant for membership of the Legislature are equally made applicable by reference to the membership of the Panchayats. Though such qualifications and disqualifications could be stipulated only by Parliament with respect to the membership of the Legislature of a State. The Constitution authorises the concerned State Legislature also to stipulate disqualifications for being a member of Panchayat. The right to vote and right to contest election to a Panchayat are constitutional rights subsequent to the introduction of part IX of the Constitution of India. Both the rights can be regulated/curtailed by the appropriate Legislature directly. Parliament can indirectly curtail only the right to contest by prescribing disqualifications for membership of a Legislature of a State.

It is a settled principle of law that curtailment of any right whether such a right emanates from common law, customary law or the Constitution can only be done by laws made by an appropriate Legislative Body. Under the scheme of our Constitution, the appropriateness of the Legislative Body is determined on the basis of the nature of the rights short to be curtailed or relevant and the competence of the Legislative Body to deal with the right having regard to the distribution of Legislative powers between Parliament and State Legislatures. It is also the settled principle of law under our constitution that every law made by any Legislative Body must be consistent with provisions of the Constitution. The literacy should not be made as the sole criterion for

²⁰ AIR 2010 SC 3244

²¹ 1992 AIR SCW 3682

²² AIR 1963 SC 649

²³ Article 243-F



entrusting the governance of a country to a person. Because there are example of number of persons who were not happened to be much literate but they proved themselves as good administrators. There are example of various political stalwart from ancient period to the modern age that even the little literate persons happened to be the good and efficient administrator.

CONCLUSION

Historically, education has been a privilege accorded and afforded by the wealthy. The additional imposition of educational qualification deliberately ignores this historical context and hence more people are indisposed to exercise their freedom and right. The people belonging to the category of schedule caste and scheduled tribe are especially disadvantaged because of this. The presumptions position of the legislation reflects a glaring disconnect with the people of the State.

Therefore, in my view the people who have to run the administration efficiently of the Panchayat, Panchayat Samiti and Zila Parishad shouldn't they all have to be educated to the same level. By imposing qualification as a criteria for contesting election to any of the above bodies resulting in depriving the chunk of population from the privilege of being a member of Panchayat, Panchayat Samiti and Zila Parishad. Very often it is the poor and the downtrodden that cannot affect to be educated. It may be because of economical reasons or just plain simple social. Therefore, the legislation enacted in this regard disabled people from participating in the electoral process because they were not able to afford this privilege.