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Responses to Information Requests

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28 May 2021

IND200630.E

India: Role of a sarpanch, including the method by which the position is filled; the kind of authority a sarpanch has in relation to the law, including their relationship with the police; whether a sarpanch can issue documents, including the types of documents (2019–June 2021)

Research Directorate, Immigration and Refugee Board of Canada

1. Overview

According to sources, a sarpanch, also known as a *mukhiya*, is an elected representative and the "chairperson" (CPR 4 May 2020) or "president" (PRIA n.d.a) of a *gram panchayat* (CPR 4 May 2020; PRIA n.d.a). A gram panchayat is the village-level "constitutional unit for local self-governance" (CPR 4 May 2020) or a unit of local government (PRIA n.d.a). *Encyclopædia Britannica* describes it as the "most important adjudicating and licensing agency in the self-government of an Indian caste" (*Encyclopædia Britannica* 12 Mar. 2008). Participatory Research in Asia (PRIA) [1] indicates that the gram panchayat is one of

three levels within the Panchayati Raj Institution (PRI), which is the "oldest system" of local government in India and was "officially established" by the *Constitution (Seventy-Third Amendment) Act, 1992* (PRIA n.d.a).

1.1 Definition and Role of a Panchayat

According to article 243B of the *Constitution of India*, "[t]here shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part" (India 1949). Article 243G of the *Constitution of India* provides the following:

243G. Powers, authority and responsibilities of Panchayats. —Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- a. the preparation of plans for economic development and social justice;
- b. the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. (India 1949, bold in original)

According to India Development Review (IDR), "India's first and largest independent media platform for the development community" (IDR n.d.), the creation of the three-tier system provided "constitutional status" to urban and rural systems of government, which ensures a "degree of uniformity in their structure and functioning" (IDR 28 Jan. 2020). However, the same source adds that "the actual powers and functions of these institutions are highly dependent on the laws of the state in which they operate" (IDR 28 Jan. 2020). The Indian Ministry of Panchayati Raj's 2020/2021 annual report similarly indicates that "[s]tate legislatures have a critical role in determining various aspects of Panchayati Raj in their [s]tates" (India [2021], 5).

PRIA notes that the PRI also functions as a form of "direct democracy" by exercising "all powers of a government" at the village level (PRIA n.d.a). According to a 2019 interview of Rahul Bhatnagar, the Secretary for the Ministry of Panchayati Raj, by the UN Entity for Gender Equality and the Empowerment of Women (UN Women), gram panchayats are responsible for "[a]ll planning and implementation" of social and economic development programs (UN 18 July 2019). The same source adds the following:

For example, the *panchayats (councils)* are responsible for ensuring all basic services for citizens such as drinking water supply, affordable rural housing, public distribution systems for essential commodities, maintenance of community assets, education, women and child

development, social welfare, and welfare of vulnerable sections of the society. (UN 18 July 2019, italics in original)

According to the Ministry of Panchayati Raj's report, the following regions are exempt from implementing the PRI system as provided in the Constitution:

- the states of Nagaland, Meghalaya and Mizoram
- areas covered under the Sixth Schedule, [which provides for the administration of "[t]ribal [a]reas" in the states of Assam, Meghalaya, Tripura and Mizoram (India 1949, Sixth Schedule)]
- the "hill areas" in the state of Manipur
- the district-level panchayats in the hill areas of Darjeeling (India [2021], 5).

The same source further indicates that as of January 2021, there were 255,487 gram panchayats, with 31.65 *lakh* elected representatives [equivalent to 3,165,000] across all levels of panchayats, including 14.53 lakh elected female representatives [equivalent to 1,453,000] (India [2021], 5). The article by UN Women states that 70 percent of the population in India is "covered" by these "local government institutions" (UN 18 July 2019). According to a February 2020 article by the *Times of India*, an Indian English-language daily newspaper,

Goa is the only state in the country where the state government has not empowered its 191 village panchayats and gram sabhas ["a body consisting of all the people registered in the electoral rolls who belong to a village" within the area of the gram panchayat (PRIA n.d.a)] to take decisions [on] 29 subjects, including health, education, family welfare, and land reforms among others. (*The Times of India* 25 Feb. 2020)

The same source cites a former union law minister as indicating that this is because Goa is a "small state and government" where the "zilla [district level (PRIA n.d.a)] panchayat and [gram] panchayat have the same jurisdiction"; therefore, "if the [gram] panchayat [were] empowered then nothing [would] be left with the state government" (*The Times of India* 25 Feb. 2020).

According to *Encyclopædia Britannica*, a panchayat can also act as a "court of law" (*Encyclopædia Britannica* 12 Mar. 2008). The IDR similarly states that gram panchayats, or separate *adalati* or *nyaya panchayats* [see section 1.4 of this Response], perform "[j]udicial functions," such as "trying petty civil and criminal cases" (IDR 28 Jan. 2020). According to *Encyclopædia Britannica*, the types of offences adjudicated by a panchayat include the following:

- "breaches" of restrictions on eating, drinking, or smoking
- "infractions of marriage rules"
- breaches of a caste's "customs in feast"
- breaches of a caste's "trade rules"
- the killing of certain animals, such as cows
- the "injury of a Brahman" (*Encyclopædia Britannica* 12 Mar. 2008).

The same source adds that "[l]ess commonly, the panchayat handles criminal and civil cases actionable before a court of law. Panchayats of Muslim castes try only a few of the offenses, as the rest fall under *fiqh*, or Isl[a]mic law" (*Encyclopædia Britannica* 12 Mar. 2008, italics in original).

1.2 Definition and Role of a Sarpanch

According to the website of the Centre for Policy Research (CPR), a non-profit, non-partisan public policy thinktank in India (CPR n.d.), sarpanches play a "key role" in "participatory planning, budgeting, administration and monitoring of development and poverty alleviation programmes" within a village (CPR 4 May 2020). The same source also states that sarpanches "can" "take the lead" in addressing the "grievances" of village residents (CPR 4 May 2020). In correspondence with the Research Directorate, a professor of political science from McGill University who studies comparative government and politics, including in India, provided the following information:

The primary responsibilities of village sarpanches (village council presidents) concern local administration and development, not punitive or law and order functions. For instance, they petition for and use funds for local development (e.g., of agricultural infrastructure, roads, rural employment schemes) and mediate local disputes. (Professor of political science 30 Apr. 2021)

1.3 Method by Which the Sarpanch Position Is Filled

Article 243C of the *Constitution of India* provides the following regarding the filling of seats in panchayats:

...

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

...

(4) The Chairperson of a Panchayat and 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.

(5) 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; and
- b. a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof. (India 1949, italics in original)

Article 243E(1) also provides the following regarding the duration of a panchayat:

"Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer" (India 1949).

Article 243D also provides the following:

243D. Reservation of seats. —(1) Seats shall be reserved for—

- a. the Scheduled Castes; and
- b. the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

... (India 1949, bold and italics in original)

1.4 Gram *Katchahry*

Sources indicate that, in Bihar, local disputes can be resolved by a gram katchahry [*kachahri*, *kachahari*, *katchahri*, *katchahri*], which is headed by a sarpanch (World Bank Sept. 2018, 2; *The Indian Express* 25 Oct. 2018). In correspondence with the Research Directorate, a professor of commonwealth studies at the University of London, who studies local governments and political institutions in India, indicated based on information from "local democracy specialists in India" that a gram katchahry can also be called a *nyaya* panchayat and that they exist across the country (Professor of commonwealth studies 16 May 2021). The same source added that gram katchahrys "have no connection" to gram panchayats (Professor of commonwealth studies 16 May 2021).

Article 93(1) of the *Bihar Panchayat Raj Act, 2006* notes the following regarding the election of the sarpanch of a gram katchahry in the state of Bihar: "A Sarpanch of the Gram Katchahry shall be directly elected by a majority of votes by the voters enrolled in the voters' list of that Gram Panchayat" (Bihar 2006).

Article 96 of the *Bihar Panchayat Raj Act, 2006* provides the following regarding the role of the sarpanch of a gram katchahry in the State of Bihar:

Powers and functions of Sarpanch and Up-Sarpanch - Subject to the provisions of this Act and rules made thereunder, the Sarpanch shall:

- a. be the President of Gram Katchahry and benches thereof;
- b. entertain suits and cases on application of parties and police reports;
- c. have the powers of a Civil Court under the Code of Civil Procedure, 1908 to take evidence and to compel attendance of the parties, witnesses and such other persons as may be required and production of documents or instruments for disposal of such suits or cases; and
- d. exercise such other powers and perform such other duties as may be prescribed;

... (Bihar 2006, bold in original)

Article 106 of the *Bihar Panchayat Raj Act, 2006* also provides the following regarding criminal offences:

Criminal Jurisdiction - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) and subject to the provisions of this Act a bench of the Gram Katchahry shall have jurisdiction within the local limits of the Gram Panchayat for the trial of the following offences as well as abetment of and attempts to commit any such offence if committed within the local limits of its jurisdiction, namely:-

- a. offences under the Indian Penal Code, 1860 (45 of 1860), sections 140, 142, 143, 145, 147, 151, 153, 160, 172, 174, 178, 179, 269, 277, 283, 285, 286, 289, 290, 294, 294A, 323, 334, 336, 341, 352, 356, 357, 358, 374, 403, 426, 428, 430, 447, 448, 502, 504, 506, 510;
- b. offences under the Bengal Public Gambling Act, 1867 (Ben. Act 2 of 1867);
- c. offences under sections 24 and 26 of the Cattle Trespass Act, 1871 (1 of 1871)
- d. except as otherwise provided offences under this Act; or under any rule or bye-law made there under, and
- e. any other offence under any other enactment, if empowered in this behalf by the Government:

Provided further that the Gram Katchahry shall not take cognizance of any offence in respect of which any proceeding is pending before a court of competent jurisdiction prior to the coming into effect of this Act.

Provided that the bench shall not take cognizance of any offence under section, 379, 380, 381 or 411 of the Indian Penal Code, 1860 (45 of 1860) in which the value of the property alleged to be stolen exceeds ten thousand rupees or in which the accused-

- i. has been previously convicted of an offence punishable under Chapter XVII of the Indian Penal Code, 1860 (45 of 1860) with imprisonment of either description for a term of three years or up-wards; or
- ii. has been previously fined for theft by any bench of the Gram Katchahry;
- iii. has been bound over to be of good behaviour in proceedings instituted under sections 109 or 110 of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided further that the Gram Katchahry shall not take cognizance of any offence in respect of which a complaint has been filed against the Gram Panchayat a Mukhiya or any other member of the Executive Committee, Sarpanch or a Panch. (Bihar 2006, bold in original)

2. Relationship Between a Sarpanch and the Police

According to the Professor of political science,

police officials often seek the cooperation of sarpanches in matters that are not part of their main responsibilities including consultation of village members, administration of elections, mediation with village residents, and sometimes also carrying out arrests. [The police] engage more with sarpanches who belong to the party ruling the state. At times however, they take punitive action against entire village communities including sarpanches. (Professor of political science 30 Apr. 2021)

The Professor of commonwealth studies provided the following, based "on information from specialists in India":

The chairpersons of local (gram) panchayats have no formal role in the legal process, or in relations with the police. However, if a chairperson has a formidable reputation – and they control substantial government funds in many states, which enables many of them to become formidable – they may have *informal* influence with the police and with low-level law courts. (Professor of commonwealth studies 4 May 2021, emphasis in original)

A professor of international studies at Simon Fraser University who studies Indian politics and political participation provided the following information in correspondence with the Research Directorate:

There are no elements of law and order that are the responsibility of a sarpanch (or panchayat – local council – chairman). None are indicated in the constitutional amendment setting up the panchayati raj system. A sarpanch may have a significant ability to resolve conflicts locally, but [they have] no police powers under the law. In principle, the sarpanch works cooperatively with police to ensure law and order, and a sarpanch will usually be consulted by police in the event

of an inquiry/arrest/other intervention in the sarpanch's jurisdiction. But the relationship between a sarpanch and the police will depend upon the clout of the sarpanch, and this will depend in turn on [their] connections with more senior politicians. (Professor of international studies 4 May 2021)

The same source also referred to studies [2] that describe sarpanches as "intervening with the police on behalf of village people, though not necessarily with success" (Professor of international studies 4 May 2021).

An article by the *Hindustan Times*, an English-language daily newspaper in India, reports that the sarpanch of Gadchinchale [Gaddchinchale] village in the Palghar district of Maharashtra state was provided with police protection after she received threats for "siding with the police" from relatives of individuals arrested in connection with a lynching (*Hindustan Times* 29 Apr. 2020). The World Bank, in a September 2018 issue of the *World Bank in India*, states that sarpanches of gram katchahrys in Bihar may be provided with police protection when they have been "threatened by aggrieved parties," depending on the severity of the case, and that sarpanches will work with the local police to "resolve the issues" (World Bank Sept. 2018, 3).

The World Bank also reports that the police have "often taken over the powers of non-functional gram katchahrys," which led to an order in 2012 in Bihar that restricts "all local police stations from interfering" in "matters" meant to be addressed by the gram katchahrys in Bihar (World Bank Sept. 2018, 2). The same source states that since the order was issued in 2012, sarpanches have been "enjoying full legality over their powers" in dealing with matters under the purview of the gram katchahrys and "developing better ways of coordinating with the police" in Bihar (World Bank Sept. 2018, 2). However, the Professor of commonwealth studies stated that, according to "local democracy specialists" they contacted in India, gram katchahrys have "little importance" and have had "little impact" (Professor of commonwealth studies 16 May 2021). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Article 109 of the *Bihar Panchayat Raj Act, 2006* provides the following regarding the criminal powers of a sarpanch within a gram katchahry:

Criminal powers of Sarpanch - (1) Whenever the Sarpanch has reason to believe that a breach of the peace or disturbance of the public tranquility is imminent and immediate prevention or speedy remedy is desirable, he may, by a written order stating the material facts of the case and served in the prescribed manner, direct any person to abstain from a certain act or to take action with respect to a certain property in his possession or under his management.

(2) As soon as the Sarpanch has issued an order under sub-section (1) he shall submit the proceedings of the case to the Sub-divisional Magistrate who may either confirm the order or discharge the notice after hearing the parties to the dispute, if they so desire.

(3) An order passed under sub-section (1) shall remain in force for thirty days.

(4) Any order passed under sub-section (1) shall be promptly given effect to by the concerned local authorities. (India 2006, bold in original)

3. Role of a Sarpanch in Issuing Documents

The IDR states that panchayats "play a crucial role" in administrative activities, such as the keeping of village records (IDR 28 Jan. 2020). Various village panchayat government websites from the State of Goa also state that the panchayat functions as a "[r]egistrar of [b]irths and [d]eaths" under the *Registration of Births and Deaths Act, 1969*, and that the panchayat secretary issues certificates "immediately after the registration" (Village Panchayat Assolna n.d.; Village Panchayat Colva n.d.; Village Panchayat Navelim n.d.). According to the same sources, an "abstract of [b]irths and [d]eaths [r]egistrar" can be obtained from the office of the village panchayat secretary "on payment of prescribed fees" (Village Panchayat Assolna n.d.; Village Panchayat Colva n.d.; Village Panchayat Navelim n.d.). The same sources indicate that anyone can apply to those village panchayats for a search of birth and death records for the given period, to check whether a particular birth or death was registered (Village Panchayat Assolna n.d.; Village Panchayat Colva n.d.; Village Panchayat Navelim n.d.). If no record is available, the secretary issues a "Non[]Availability Certificate" for the search over the period requested (Village Panchayat Assolna n.d.; Village Panchayat Colva n.d.; Village Panchayat Navelim n.d.).

According to IndiaSpend, a non-profit data-driven project of the Spending & Policy Research Foundation that aims to foster "better governance and more transparency and accountability in governance" (IndiaSpend n.d.), the process of registering a birth is "simple if a birth occurs in a health facility where a medical officer is in charge" (IndiaSpend 2 Jan. 2020). Sources state that local authorities at the municipal and panchayat level can also register births (IndiaSpend 2 Jan. 2020), or that a person could visit the gram panchayat office in their village to obtain their certificate (ILO 1 July 2019).

The various village panchayat government websites from the state of Goa indicate that panchayats may issue the following certificates:

- income certificate
- birth certificate
- death certificate
- occupancy certificate
- "[n]o [d]ues" certificate

- non-availability of birth or death certificate
- residence certificate
- character certificate
- dependency certificate
- poverty certificate
- divergence certificate
- "[b]onafide [f]isherman" certificate
- occupation certificate (Village Panchayat Assolna n.d.; Village Panchayat Colva n.d.; Village Panchayat Navelim n.d.).

The same village panchayats from Goa state add that panchayats may issue the following licences and permissions:

- Licence for construction or reconstruction of any structure
- Permission for repairs of house or structure
- Licence for a hotel, shop, restaurant, etc.
 - Permission for construction of factories or installation of machinery
 - Licence for using any place for trade, business or industry
 - Licence for places for disposal of dead bodies (Village Panchayat Assolna n.d.; Village Panchayat Colva n.d.; Village Panchayat Navelim n.d.).

The same sources also note that panchayats may issue "No Objection Certificates" (NOCs):

- for water connection
- for electricity connection
- for house repair
- for road cutting
- for running a general store
- for running a bar or liquor shop
- for "[e]stablishment" (Village Panchayat Assolna n.d.; Village Panchayat Colva n.d.; Village Panchayat Navelim n.d.).

The same sources state that NOCs are issued by village panchayats "after taking into consideration objections, if any, from the villagers and verifying the ownership/title documents in respect of the property" (Village Panchayat Assolna n.d.; Village Panchayat Colva n.d.; Village Panchayat Navelim n.d.). Information on documents issued by panchayats in other states could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

An article by the Sakshi Post, a news portal based in Telangana, India, states that, according to the Telangana High Court, sarpanches cannot authorize the issuance of "notices to demolish illegal constructions in the village" on behalf of a gram panchayat and added that it is the panchayat secretary who has the power to do so (Sakshi Post 6 June 2019). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the Professor of commonwealth studies, based on information from "specialists" in India,

[c]hairpersons [sarpanches] have no formal role in issuing certificates to local residents. Certificates are issued by other employees of the local panchayat, but those employees may be influenced by chairpersons. In some states, certificates are issued by the Revenue Department, which is usually beyond the reach of local panchayat chairpersons. Note, though, that the certificates are mostly rather mundane, unimportant documents. (Professor of commonwealth studies 4 May 2021)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.1 Documentation for Women

A report by Human Rights Watch (HRW) states that women in India "are more likely than men to lack access to documentation," especially women from poor and marginalized communities (HRW 9 Apr. 2020, 9-10). The same report states that because of these barriers, "women are particularly likely to rely on a residency certificate issued by a *gram panchayat* ... to prove their status" (HRW 9 Apr. 2020, 27, italics in original). However, in *Rupajan Begum v. Union of India*, the Supreme Court of India references a decision by the High Court of Guwahati in 2017 from the state of Assam, which ruled that the "Certificate of the Gram Panchayat Secretary is not a legal and valid document which can be legitimately used to support ... a claim" for inclusion in the National Register of Citizens (NRC) of Assam state (India 24 Aug. 2017). In December 2017, the Supreme Court provided the following regarding "[c]ertificate[s] issued by the Secretary of the Village Panchayat and countersigned by the local revenue official in respect of females who have migrated to other villages after marriage or such certificates issued by jurisdictional circle officers in respect of urban areas":

The certificate issued by the G.P. [gram panchayat] Secretary merely acknowledges the shifting of residence of a married woman from one village to another. The said certificate by itself and [sic] by no means establishes any claim of citizenship of the holder of the certificate. ... [A] claim accompanied by such a certificate, without details of the legacy person, is to be discarded and in the event information as to the legacy person has been furnished, the certificate in question is to be used for the limited purpose of providing a linkage after due enquiry and verification. (India 5 Dec. 2017, para. 15)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] Participatory Research in Asia (PRIA) is a New Delhi-based "global centre for participatory research and training" that works with a network of 3,000 NGOs on addressing universal access to water and sanitation, violence against women and the building of "local human and institutional capacities in hitherto neglected locations" (PRIA n.d.b).

[2] The Professor of international studies gave as an example a study on police and legal patronage in northern India (Professor of international studies 4 May 2021) published in *Patronage as Politics in South Asia* by Cambridge University Press in 2014 (Jauregui 2014).

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Internet sites, including: Al Jazeera; Amnesty International; Australia – Department of Foreign Affairs and Trade; BBC; Belgium – Commissariat général aux réfugiés et aux apatrides; Bertelsmann Stiftung; Brookings Institution; Center for Strategic and International Studies; Council on Foreign Relations; Denmark – Danish Immigration Service; ecoi.net; *The Economic Times*; EU – European Asylum Support Office; Factiva; Fédération internationale pour les droits humains; France – Office français de protection des réfugiés et apatrides; Freedom House; *The Guardian*; *The Hindu*; India – Ministry of Rural Development, National Human Rights Commission; Institute for War and Peace Reporting; International Crisis Group; INTERPOL; LandInfo; Médecins sans frontières; Minority Rights Group International; *The Mint*; Netherlands – Ministry of Foreign Affairs; The New Humanitarian; Organisation suisse d'aide aux réfugiés; Our Legal World; Radio Free Asia; Radio Free Europe/Radio Liberty; *Telangana Today*; Transparency International; UK – Home Office; UN – Office of the UN High Commissioner for Human Rights, UNDP, UNHCR, Refworld, WHO; US – Department of State, Library of Congress, Overseas Security Advisory Council; Wilson Center.

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